

Nov. 29, 1983\*

Rules Amending Title 13, Administrative Rules

November 18, 1983

SUMMARY

Title 13, Administrative Rules, is amended by adding a new Chapter 167 entitled, "Protection of Instream Uses of Water, Windward Oahu".

- \* While these rules have been adopted by the Board of Land and Natural Resources, they have yet to be approved by the Governor and filed with the office of the Lieutenant Governor.

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

CHAPTER 167

PROTECTION OF INSTREAM USES OF WATER, WINDWARD OAHU

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## Subchapter 1

### General Provisions

§13-167-1 Purpose. The purpose of this chapter is to provide for the establishment of a program to protect beneficial instream uses in Windward Oahu where practicable, including the development of standards for instream flows and the creation of a permit system to regulate the alteration of stream channels.  
[Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-2)

§13-167-2 Definitions. As used in this chapter:

"Baseline research" means the gathering of data of a primary nature which is used to create a base or foundation of knowledge for understanding some subject, such as the stream water of a particular Windward Oahu stream.

"Board" means the board of land and natural resources.

"Channel alteration" means: (1) to obstruct, diminish, destroy, modify, or relocate a stream channel; (2) to change the direction of flow of water in a stream channel; (3) the placement of any material or structures in a stream channel; and (4) the removal of any material or structures from a stream channel.

"Department" means the department of land and natural resources.

"Instream flow standard" means that standard, adopted by the board according to subchapter 3 of this chapter, which includes a quantity, flow, depth, and other quantitative and qualitative measures of stream water which are required to be present at a specific location or between two specific points in a stream system at specified times of the year to ensure the protection of beneficial instream uses.

"Instream use" means the use of stream water for purposes which do not require its withdrawal or diversion from its watercourse, including the use of the stream for:

- (1) The maintenance of fish and wildlife habitats;
- (2) Water-based recreation;
- (3) The maintenance of stream ecosystems, such as estuaries, wetlands, and stream vegetation;
- (4) The aesthetic enjoyment of waterfalls, scenic waterways, and scenic stream systems;

- (5) Navigation;
- (6) Instream hydropower generation;
- (7) The maintenance of water quality; and
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion.

"Interim instream flow standard" means a temporary instream flow standard of immediate applicability, adopted by the board without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard.

"Non-instream use" means the use of stream water that is diverted or removed from its stream channel and includes the use of stream water outside of the channel for domestic, agricultural, and industrial purposes.

"Person" means any person, firm, association, organization, partnership, business, trust, corporation, company, the State of Hawaii and its agencies, political subdivisions of the State, and the United States of America and its agencies.

"Stream" means a course of running water usually flowing in a particular direction in a definite channel and discharging in some other stream or body of water.

"Stream channel" means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water. The channel referred to is that which exists at the time of enactment of this chapter, regardless of where the channel may have been located at any time in the past.

"Stream reach" means a segment of a stream channel having a defined upstream and downstream point.

"Stream system" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. [Eff. \_\_\_\_\_] (Auth: HRS §176D-5) (Imp: HRS §176D-3)

§13-167-3 Principles of instream use protection. The protection of instream uses in Windward Oahu shall be guided by the following general principles:

- (1) The quality of the stream systems of Windward Oahu shall be protected and enhanced where practicable. Accordingly, streams in the area should be maintained with water sufficient to preserve fish, wildlife, scenic, aesthetic, recreational, and other instream uses, and stream systems should be retained substantially in their natural condition.
- (2) A systematic program of baseline research is recognized as a vital part of the effort to describe and evaluate stream systems, to identify instream uses, and to provide for the protection and enhancement of such stream systems and uses.
- (3) The alteration of stream channels should be governed by a permit system.

- (4) Full recognition should be given to the natural inter-relationship between surface and ground waters.
- (5) In determining flow requirements to protect instream uses or in assessing stream channel alterations, consideration should be given to the maintenance of existing non-instream uses of economic importance and the preservation of stream waters for potential non-instream uses of public benefit.
- (6) The impact of stream protection measures on existing non-instream uses of stream waters should be minimized wherever possible by physical solutions such as water exchanges, modifications of project operations, changes in points of water withdrawal, changes in time and rate of water withdrawal, and uses of water from alternative sources.
- (7) Expressions of the public interest should be sought in the implementation of this chapter.  
[Eff. ] (Auth: HRS §176D-5) (Imp: HRS §§176D-2, 176D-4)

§13-167-4 Penalties. Any person violating any provision of this chapter or any permit condition or limitation established pursuant to this chapter or who negligently or willfully fails or refuses to comply with any final order of the board issued as provided in this chapter shall be liable for a civil penalty not to exceed \$1,000 for each instance of such violation and additional civil penalties not to exceed \$500 for each day each such violation continues. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-6)

§13-167-5 Administrative and judicial review. Any person who is aggrieved or adversely affected by an order or action of the board pertaining to any provision of this chapter may seek administrative and judicial review in accordance with chapter 91, Hawaii Revised Statutes. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-7)

## Subchapter 2

### Instream Use Protection Program

§13-167-6 Establishment of program. An instream use protection program designed to protect, enhance, and re-establish, where practicable, beneficial instream uses of water in Windward Oahu shall be established within the department. The program shall include the:

- (1) Conducting of baseline research and the undertaking of hydrologic investigations on the area's stream systems;
  - (2) Identification and documentation of instream uses of significance for the area;
  - (3) Identification and documentation of existing stream water development;
  - (4) Establishment and monitoring of instream flow standards and interim instream flow standards for the preservation of stream waters to sustain the instream uses identified in subsection (2) above; and
  - (5) Establishment of a permit system to regulate the alteration of any stream channel in the area.
- [Eff.                   ] (Auth: HRS §176D-5)  
(Imp: HRS §176D-4)

§13-167-7 Baseline research. A continuing comprehensive program of baseline research for the area's streams and stream systems shall be initiated as part of the program to protect instream uses in Windward Oahu. Data from this research shall be used in developing the instream flow standards required under this chapter. When advisable, the board may contract with any person for the baseline research to be performed.  
[Eff.                   ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-8 Scope of research. The baseline research required in §13-167-7 shall include:

- (1) Field surveys to identify and document instream and non-stream uses of stream water;
- (2) The collection of hydrologic data and assessments of streamflow characteristics and stream ecosystems; and
- (3) Determinations of stream water requirements for significant instream uses. [Eff.                   ]

(Auth: HRS §176D-5) (Imp: HRS §176D-4)

### Subchapter 3

#### Instream Flow Standard

§13-167-9 Initiation by board. The board may initiate proceedings for the establishment of an instream flow standard for any stream(s) or stream reach(es) in Windward Oahu by setting in writing its conclusion that the public interest does require an instream flow standard to be set, the reasons therefor, and the findings supporting the reasons.  
[Eff.                   ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-10 Notice of intent. (a) Upon the board's decision to initiate proceedings to establish an instream flow standard, the department shall publish a notice of the board's intention to set the instream flow standard, setting forth:

(1) The affected stream(s) or stream reach(es) thereof; and

(2) A statement that interested persons may transmit their views in writing to the department.

(b) The notice shall be published at least once in a newspaper of general circulation published in the vicinity of the stream(s) or reach(es) in question and be given to persons who have previously requested the notice. [Eff. ]

(Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-11 Investigations required. (a) Before any proposed instream flow standard is established by the board, the department shall conduct whatever investigation is deemed necessary for the board to reach a decision. During the investigation the department shall consult with and consider the recommendations of the state department of health, the U.S. Fish and Wildlife Service, and other agencies and persons having information on the stream(s) or reach(es).

(b) The department from time to time may also require reports from users of stream water detailing the quantity of water being used and the manner and extent of the use.

[Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-12 Methodology for development of instream flow standard. (a) Each candidate stream or stream reach shall be assessed for the following instream uses:

- (1) Stream fauna habitat;
- (2) Stream flora habitat;
- (3) Aesthetic enjoyment;
- (4) Water-based recreation;
- (5) Navigation;
- (6) Maintenance of water quality;
- (7) Instream hydropower generation;
- (8) Water supply conveyance; and
- (9) Any other beneficial instream use.

In assessing instream uses, the department may employ various methods to determine the significance of each use and its associated stream water requirements. Instream uses may be quantitatively or qualitatively rated, recognizing that some instream uses rely on things other than streamflow to maintain their overall value. The assessment of instream uses shall be substantiated by adequate surveys to provide an indication of a stream or stream reach's potential to host particular instream uses, taking into account existing and potential water developments.

(b) The hydrologic data and streamflow characteristics of a stream or stream reach under consideration shall be analyzed and evaluated.

(c) Based on the evaluated instream use(s), requirements for the stream within defined reaches shall be determined. These requirements shall be expressed for specified time intervals (such as monthly or seasonal) and reaches in terms of the quantity, depth, quality, or other measurable attributes of stream water, or a combination of these attributes, needed to preserve, enhance, or restore the stream or stream reach's ability to provide for those identified instream uses. When quantitative data cannot be developed without undue expenditure of time, financing, and effort, the department may recommend qualitatively derived requirements. [Eff. ]  
(Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-13 Notice; public hearing. (a) Upon the drafting of a proposed instream flow standard and prior to its adoption, the department shall hold a public hearing and shall publish a notice of the hearing, setting forth the:

- (1) Affected stream(s) or stream reach(es) thereof;
- (2) Purpose of the public hearing; and
- (3) Time, date, and place of the public hearing where written or oral testimony may be submitted or heard.

(b) The notice shall be published at least once in a newspaper of general circulation published in the vicinity of the stream(s) in question, and the last publication shall be not less than twenty days before the date set for the hearing.  
[Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-14 Decision of board. After the required public hearing and after necessary investigations have been completed, the department shall make a recommendation to the board for its decision. In considering the adoption of the proposed instream flow standard, the board shall weigh the importance of the present or potential instream uses with the importance of the present or potential non-instream uses of water, including the economic impact of restriction of such uses. The board shall cause a notice of its decision concerning the adoption of the instream flow standard to be published in a newspaper of general circulation. Upon its adoption by the board, the instream flow standard shall be incorporated into these rules and made a part hereof. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §§176D-4, 176D-7)

§13-167-15 Modifying and rescinding instream flow standard. The modification or rescinding of an existing instream flow standard by the board may be initiated by the board or by



a petition to the board by any interested person. The procedure for modifying or rescinding an existing instream flow standard shall be similar to that for the establishment of an instream flow standard; provided that insubstantial modification as determined by the board may be authorized without notice or hearing upon order of the board and provided, further, that the board shall hold a hearing upon the written request of any person adversely affected by such order. [Eff. ]  
(Auth: HRS 176D-5) (Imp: HRS §176D-4)

#### Subchapter 4

##### Interim Instream Flow Standard

###### §13-16 Petition to adopt interim instream flow standard.

(a) Pending the establishment of an instream flow standard for any particular Windward Oahu stream(s) or stream reach(es), any person may petition the board to adopt an interim instream flow standard for such stream(s) or reach(es).

(b) The petition to adopt an interim instream flow standard shall set forth data and information concerning the need to protect or enhance the instream use(s) of the stream(s) or stream reach(es), and any other relevant and reasonable information required by the board. [Eff. ]  
(Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-17 Time period for board action. The board shall grant or reject a petition to adopt an interim instream flow standard under this subchapter within one hundred eighty days of the date the petition is received. The one hundred eighty days may be extended a maximum of one hundred eighty days at the request of the petitioner, subject to the approval of the board. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-18 Adoption of interim instream flow standard. An interim instream flow standard shall be adopted by order of the board. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-19 Termination of interim instream flow standard. Any interim instream flow standard adopted under this subchapter shall terminate upon the establishment of an instream flow standard for the stream(s) or stream reach(es) for which the interim instream flow standard was adopted. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

## Subchapter 5

### Permit to Alter a Stream Channel

§13-167-20 Permit required. No Windward Oahu stream channel shall be altered until an application for a permit to undertake the work has been filed and a permit is issued by the board. Channel alterations underway at the effective date of this chapter will not be affected by this subchapter.  
[Eff. ] (Auth: HRS §176D-5) (Imp: HRS 176D-4)

§13-167-21 Application for permit; filing fee. (a) A person desiring a stream channel alteration in Windward Oahu shall file an application with the board. No alteration work shall be undertaken by the applicant until a permit is issued by the board.

(b) Each application for a permit shall be made on forms furnished by the department and shall include:

- (1) The name and address of the applicant;
- (2) The location and description of the proposed stream channel alteration and related facilities;
- (3) An assessment of the impact the channel alteration will have on the stream environment;
- (4) Relevant maps, plans, and drawings; and
- (5) Other information as may be necessary for the board to determine the merits of the proposed stream channel alteration, including any hazards to public health, safety, or welfare, and the desirability of issuing a permit.

(c) Each application for a permit to undertake a stream channel alteration shall be accompanied by a non-refundable filing fee of \$25.00; provided that no fee shall be required of government agencies. [Eff. ] (Auth: HRS §176D-5)  
(Imp: HRS §176D-4)

§13-167-22 Criteria for ruling on application. (a) Based upon the findings of fact concerning an application for a stream channel alteration permit, the board shall either approve in whole, approve in part, approve with modifications, or reject the application for a permit.

(b) In reviewing an application for a permit, the board shall cooperate with persons having direct interest in the channel alteration and be guided by the following general considerations:

- (1) Channel alterations that would adversely affect the quantity and quality of the stream water or the stream ecology should not be allowed, except in those situations where it is clear that overriding considerations of the public interest will be served.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to subchapters 3 and 4, no permit should be granted for any channel alteration which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
- (3) The proposed channel alteration should not interfere substantially and materially with existing instream or non-instream uses or with channel alterations previously permitted. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-23 Term of permit. (a) Every permit approved and issued by the board shall be for a specified period, not to exceed two years, unless otherwise specified in the permit.

(b) Every permit approved and issued by the board shall contain the commencement and completion dates for the permitted activity. In determining the commencement and completion dates of the activity, the board shall take into consideration the:

- (1) Cost and magnitude of the project;
- (2) Engineering and physical features involved;
- (3) Existing conditions; and
- (4) Public interests affected.

(c) The board may extend the completion dates of the activity prescribed in any permit upon a showing of good cause and good-faith performance.

(d) If the commencement or completion date is not complied with, the department shall notify the permittee by certified mail that the permit shall be revoked within sixty days unless the permittee can show good cause that it should not be revoked. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-24 Revocation of permit. (a) A permit may be revoked in whole or in part for any:

- (1) Material false statement in the application or in any report or statement of fact required pursuant to this chapter;
- (2) Violation of this chapter relative to the permit; or
- (3) Violation of the conditions of the permit.

(b) In any proceeding to revoke a permit in whole or in part, the board shall give written notice to the permit holder of the facts or conditions which warranted the action and provide the permit holder the opportunity for a hearing. [Eff. ] (Auth: HRS §176D-5) (Imp: HRS §176D-4)

§13-167-25 Emergency work. (a) When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of

structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.

(b) In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.

(c) As soon as practicable after the initiation of the emergency work, but no later than twenty four hours thereafter, the person effecting the work shall notify the department of the circumstances giving rise to the work and the nature of the remedial work to be undertaken.

(d) Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the board a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.

(e) No fee will be required for the filing of a report for emergency channel alteration work. [Eff. ]

(Auth: HRS §176D-5) (Imp: HRS §176D-4)

The amendment to Title 13, Administrative Rules, on the Summary Page dated November 18, 1983, was adopted on November 18, 1983, following public hearings held on Oahu on September 21 and 28, 1983, after public notice was given in The Honolulu Star Bulletin on August 29 and 31, 1983.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

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SUSUMU ONO, Chairperson  
Board of Land & Natural Resources

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Member  
Board of Land & Natural Resources

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GEORGE R. ARIYOSHI  
GOVERNOR  
STATE OF HAWAII

Dated:

APPROVED AS TO FORM:

Deputy Attorney General

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Filed

Chapter 183

LEASING AND DRILLING  
OF  
GEOTHERMAL RESOURCES

Rules Repealing the Department of Land and Natural Resources, Division of Water and Land Development Regulation 8, and Adopting Chapter 183 of Title 13, Administrative Rules.

May 8, 1981

SUMMARY

1. Regulation 8 of the Division of Water and Land Development, Department of Land and Natural Resources, entitled, "Regulations on Leasing of Geothermal Resources and Drilling for Geothermal Resources in Hawaii", is repealed.

2. Chapter 183 of Title 13, Administrative Rules entitled "Rules on Leasing and Drilling of Geothermal Resources" implementing chapters 177, 178, and 187, HRS, is adopted.

Regulation 8. "Regulations on Leasing of Geothermal  
Resources and Drilling for Geothermal Resources in  
Hawaii." Division of Water and Land Development.  
REPEALED [ JUN 22 1981 ].



## TITLE 13

### DEPARTMENT OF LAND AND NATURAL RESOURCES

#### SUB-TITLE 7. WATER AND LAND DEVELOPMENT

#### CHAPTER 183

#### RULES ON LEASING AND DRILLING OF GEOTHERMAL RESOURCES

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Historical Note: Chapter 183 of Title 13, Rules on Leasing and Drilling of Geothermal Resources, is based substantially on Regulation 8, Regulations on Leasing of Geothermal Resources and Drilling for Geothermal Resources in Hawaii.

[Eff. 5/19/78; R JUN 22 1981 ]

Subchapter 1. General

§13-183-1 Purpose. (a) The purpose of these rules is to provide for:

- (1) The leasing of geothermal resources on state or reserved lands; and
- (2) The regulation of all drilling of geothermal resources in Hawaii.
- (b) The rules contained in subchapters 2 through 7 shall regulate the exploration, development, and production of geothermal resources and its by-products on state or reserved lands.

(c) The rules contained in subchapters 8 through 13 shall regulate the drilling of all wells for geothermal resources and its by-products, and shall apply to all lands within the State including privately owned lands. All wells shall be drilled, operated and maintained, or abandoned in accordance with these rules for the purpose of:

- (1) Preventing waste;
- (2) Conserving and providing for the optimum use of geothermal resources;
- (3) Minimizing or preventing degradation of the environment, surface and ground waters, and other natural resources; and
- (4) Preventing injury to life and property.

[Eff. JUN 22 1981] (Auth: HRS §182-14)

(Imp: HRS §182-14)

§13-183-2 Authority. These rules are promulgated pursuant to the jurisdiction and authority of the board of land and natural resources as provided in chapters 177, 178 and 182, Hawaii Revised States.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp. HRS §183-14)

§13-183-3 Definitions. As used herein unless otherwise provided:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources or the designated representative.

"Commercial quantities" means quantities sufficient to provide a return after current production and operating costs have been met.

"Department" means the department of land and natural resources.

"Force Majeure" means any fire, explosion, flood, volcanic activity, seismic or tidal wave, mobilization, war (whether declared or undeclared), act of any belligerent in any such war, riot, rebellion, the elements, power shortages, strike, lockout, difference of workers, any cause which prevents the economic mining of the geothermal resources, restraints by courts, or other governmental authorities, failure or unreasonable delay by governmental authorities in issuance of permits or approvals or any other cause beyond the reasonable control of the parties affected, whether or not of the nature or character hereinabove specifically enumerated.

"Geothermal by-product" means any mineral or minerals (exclusive of oil, hydrocarbon gas and helium) which are found in solution or developed in association with geothermal resources and demineralized or desalted effluent water.

"Geothermal resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas or other hydrocarbon substances.

"Mining lease" means a lease of the right to conduct geothermal operations on State lands or reserved lands to discover, develop, produce, and utilize geothermal resources therein. Unless the context indicates otherwise, "lease" or "geothermal lease" means "mining lease".

"Mining lessee" means any person as defined herein to whom a mining lease has been granted including a transferee, assignee, sublessee or successor in interest. It also means any agent of the mining lessee or an operator holding authority by or through the mining lessee. Unless the context indicates otherwise "Lessee" means "mining lessee".

"Mining operations" means the process of excavation, extraction and removal of minerals, and the development of any and all geothermal resources, from the

ground, design engineering, other engineering, erection or transportation facilities and port facilities, erection of necessary plants, other necessary operations or development approved by the board preceding or connected with the actual extraction of minerals and the development of geothermal resources.

"Occupier" means any person who owns in fee the surface of the land or any person entitled to the possession of land under a certificate of occupation, a nine hundred and ninety-nine year homestead lease, a right of purchase lease, a cash freehold agreement, or under a deed, grant, or patent, and any person entitled to possession under a general lease from the state, and also means and includes the assignee of the right to a mining lease from any one of the above.

"Operator" means any person as defined herein engaged in drilling, maintaining, operating, producing, or having control or management of any geothermal well or the development of geothermal resources. The operator may be the landowner, the lessee, designated operator, or agent of the lessee or holder of rights under an approved operating agreement.

"Person" means a United States citizen of legal age, association of the citizens, firms and corporations organized under the laws of the United States, any state or District of Columbia and qualified to do business in the state, including any governmental unit, trust or estate.

"Reserved lands" means those lands owned or leased by any person in which the state or its predecessors in interest has reserved to itself, expressly or by implication the minerals or right to mine minerals, or both.

"State lands" includes all public and other lands owned by or in possession, use and control of the State of Hawaii or any of its agencies.

"Unit agreement" means an agreement or plan of development and operation for the production and utilization of geothermal resources as a single consolidated unit without regard to separate ownerships and which provides for the allocation of costs and benefits on a basis defined in the agreement or plan.

"Waste" means the unnecessary or excessive dissipation or loss of geothermal resources resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well or wells, or with respect to the production, gathering, transportation, storage, handling or utilization of geothermal resources. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: -HRS §§182-1, 182-14)

§13-183-4 Penalty. Any person violating the provisions of this chapter shall be punished as provided in §§178-7 and 182-17, Hawaii Revised Statutes. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §§178-7, 182-17)

§13-183-5 Appeal. Unless provided otherwise, any person adversely affected thereby may appeal to the circuit court from any ruling of the board pursuant to chapter 91, Hawaii Revised Statutes. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §178-10)

§13-183-6 Right of entry. Any authorized representative or employee of the department shall have free access and right of entry to all wells, producing facilities and their appurtenances for the purpose of inspecting or testing wells and equipment for the purpose of determining compliance with these rules. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §178-9)

## Subchapter 2. Geothermal Exploration Permits

§13-183-7 Exploration permit required on state and reserved lands. An exploration permit is required to conduct any exploration activity on state or reserved lands for evidence of geothermal resources. Exploration activity includes, but is not limited to, geophysical operations, drilling of shallow temperature test holes less than five hundred feet in depth, or deeper as may be determined by the board, construction of roads and trails, and cross-country transit by vehicle over state lands. All other drillings on state or reserved lands shall be regulated as provided in subchapters 8 through 13 herein. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §182-6)

§13-183-8 Application for exploration permits. Any person may apply for an exploration permit on any state or reserved land by submitting a written application to the board containing the following:

- (1) The name and address of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities.
- (2) A description of the type of exploration activities proposed to be undertaken.
- (3) A description of the lands to be explored.
- (4) A map or maps, available from state or federal sources, showing the lands to be entered or disturbed.

- (5) The approximate dates of the commencement and termination of exploration activities.
- (6) A statement by applicant agreeing to submit to the board within twenty calendar days after notification by the board that the permit application has been approved by a surety company bond in the amount of \$10,000 payable to the State conditioned upon compliance with all terms and conditions of the exploration permit. If any person holds more than one exploration permit in the State, that person may file with the board, in lieu of separate bonds for each exploration permit, a blanket bond in the amount of \$50,000.
- (7) The name and address of the surface owner of the land.
- (8) Evidence that the owner and surface lessee, if any, has or has not consented to the entry upon the land and a description of the efforts made and the reasons for not securing the consent.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-6)

§13-183-9 Permit filing fee. Each application shall be accompanied by a non-refundable filing fee in the amount of \$100. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§182-6, 171-6)

§13-183-10 Number of permits. The number of permits shall be in accordance with and as provided in §182-8 Hawaii Revised Statutes. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-8)

§13-183-11 Approval of permit applications. All applications shall be subject to the approval of and the terms and conditions set by the board. Any application for a geothermal exploration permit not approved within sixty calendar days after the date of receipt of the application shall be resubmitted unless the same has been extended by the board. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-6)

§13-183-12 Non-exclusive permits. Geothermal exploration permits under this subchapter allow only non-exclusive access to state or reserved lands for geothermal exploration activity prescribed in §13-183-7 and do not provide any preference rights to a mining lease of the lands explored by the permits. In the event an exploration permit is in effect on or issued after the commencement date of a mining lease covering all or part of the same state or reserved lands, the permittee's rights shall be subordinate to the lessee's



rights and the permittee's exploration activities shall not unreasonably interfere with or prevent the mining lessee's use of the leasehold. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-6)

§13-183-13 Duration of permits. Exploration permits shall be valid for a period of one year from date of issuance, but may be renewed for an additional period of time at the discretion of the board.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-6)

*Duration of permit*

§13-183-14 Confidentiality of exploration results. Within sixty days after the termination date of an exploration permit, the permittee shall submit the results of the exploration to the chairperson of the board, which result shall be kept confidential by the board. If the permittee makes an application for a geothermal mining lease of the lands explored within a period of six months from the date the results are submitted to the board, the board shall continue to keep the results confidential until a lease for the lands has been issued or for three years from the date of submission of the data, whichever is sooner. If the permittee does not make an application for a geothermal mining lease or leases for the lands explored within a period of six months from the date the results are submitted to the board, the board at its discretion need not keep the results confidential.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-6)

§13-183-15 Departmental investigation. The department may conduct scheduled and unscheduled inspections and investigations of operations conducted under geothermal exploration permits. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§177-5,199-3)

§13-183-16 Suspension of permits. The chairperson may issue an order immediately suspending operations conducted under a geothermal exploration permit if the permittee is in violation of any terms or conditions of the permit or, in the judgment of the chairperson, the operations jeopardize the health, safety, and welfare of the public. Any suspension shall be referred to and reviewed by the board at its next regular meeting.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

§13-183-17 Cancellation of permits. The board may cancel an exploration permit if it finds, after notice to the permittee and allowance for an opportunity for hearing and compliance with the requirements of the

permit, that permit requirements are not being observed.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§182-6, 182-14)

§13-183-18 Compliance with applicable laws. The permittee shall be required to comply with the requirements of all federal, state, and applicable county laws, rules, and regulations. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

### Subchapter 3. Leases Generally

§13-183-19 Geothermal mining leases. The board may, in accordance with these rules grant mining leases conveying to the lessee the exclusive rights to drill, discover, develop, operate, utilize, and sell geothermal resources on state and reserved lands, subject, however, to the board's right to issue exploration permits on the leased land for the sole purpose of evaluating the extent of geothermal resources existing on adjacent state or reserved land. The board shall set forth the terms and conditions of the mining lease prior to the public auctioning or granting without public auction. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-4, 182-5)

§13-183-20 Geothermal resources available for leasing. All state and reserved lands shall, at the discretion of the board, be considered available for geothermal mining leases. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-4)

§13-183-21 Persons eligible to hold leases. Any person as defined in §13-183-3 of these rules shall be eligible to lease geothermal resources in state or reserved lands or take or hold an interest therein, unless the person is in arrears in the payment of taxes, rents or other obligations owing the State or any of its political subdivisions. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§171-36, 182-14)

§13-183-22 Mining leases by public auction. Mining leases on state lands shall be granted only on a competitive bid basis at public auction as provided in subchapter 4. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-4)

§13-183-23 Mining leases without public auction. Mining leases on reserved lands may be granted on a competitive bid basis by public auction or without public auction to the occupier or to his assignee of the rights to obtain a mining lease, upon the vote of two-

thirds of the board members, pursuant to §182-5, Hawaii Revised Statutes. [Eff. JUN 22 1981]  
 (Auth: HRS §182-14) (Imp: HRS §182-5)

§13-183-24 Size of leaseable tract. Unless otherwise approved by the board a geothermal mining lease shall not embrace an area of more than 5,000 acres of contiguous land. No lease shall grant and include an area of more than 2,560 acres of contiguous land if that area's longest dimension is six times greater than its narrowest dimension. A geothermal mining lease shall embrace an area of not less than 100 acres, unless the board, at its discretion, deems otherwise.  
 [Eff. JUN 22 1981] (Auth: HRS §182-14)  
 (Imp: HRS §182-8)

§13-183-25 Transfer of mining leases; overriding royalty interests. (a) Any transfer of a mining lease, which includes the assignment or sublease thereof, shall be subject to the approval of the board. No transfer of a mining lease to a minor shall be approved except to a permittee's heir or devisee. All applications for approval of transfers shall be accompanied by a non-refundable fee of \$100 for each assignment.

(b) Upon approval of the board a mining lease may be transferred in whole or in part, to a transferee who shall have the same qualifications as any bidder for a mining lease. The transferee shall be bound by the terms of the lease to the same extent as if the transferee were the original lessee. The board may release the transferor from any liabilities or duties under the mining lease as to the portion thereof transferred except for any liability or duty which arose prior to the approval of the transfer by the board and which remains unsatisfied or unperformed.

(c) No transfer shall be effective until written approval is given.

(d) A lease may be transferred as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the transferred nor the retained acreage created by the transfer shall contain less than one hundred acres unless the board at its discretion approves otherwise. No undivided interest in a lease of less than ten percent shall be created by any voluntary transfer.

(e) The transferor and its surety shall continue to be responsible for performance of any and all obligations under the lease unless released by the board. After the approval of any transfer, the transferee and surety shall be bound by the terms of the lease to the same extent as if the transferee were the original lessee, any conditions in the transfer to the contrary notwithstanding.

(f) Where a transfer does not convey a separate interest in the record title to the lease, the transferee, if the transfer so provides, may become a joint principal on the bond with the transferor. The application shall also be accompanied by a consent of the surety to remain bound under the bond of record, if the bond, by its terms, does not contain the consent. If a party to the transfer has previously furnished a state-wide bond, no additional showing by the party is necessary.

(g) Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these rules and shall be based on the percentage of overriding royalty multiplied by the acreage involved. If an overriding royalty interest is created which is not shown in the instrument of transfer, a statement shall be filed with the chairperson describing the interest. Any transfer shall be accompanied by a notarized statement that the transferee is a person as defined in these rules and that their interests in geothermal leases do not exceed any acreage limitations established. All transfers of overriding royalty interests without a working interest and otherwise not contemplated by §13-183-25 shall be filed for record in the office of the department in Honolulu within ninety days from the date of execution. The interests do not require approval. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-11)

§13-183-26 Revocation of mining leases.

(a) A mining lease may be revoked by the board if the lessee fails to pay rentals or royalties when due or fails to comply with any of the other terms of the lease, law, or rules, or if the lessee wholly ceases all mining operations for a period of one year without the written consent of the board for reasons other than force majeure or the production of less than commercial quantities of geothermal resources or by-products. Before revocation of a lease for defaults other than the failure to pay rents or royalties when due, the board shall give the lessee written notice of the claimed default and an opportunity to be heard within thirty days of the notice. The lessee shall be allowed sixty days to correct the default or, if the default is one that cannot be corrected within sixty days to commence in good faith and thereafter proceed diligently to correct the default, following written notice of a determination after hearing by the board that the default exists. Failure to comply with the foregoing shall be deemed sufficient cause for revocation. Defaults arising because of failure to pay rents or royalties when due shall be cured within sixty days of a written notice of default or the lease may be revoked.

In the alternative, the lessee may surrender the lease pursuant to §13-183-27.

(b) Upon the revocation of a geothermal mining lease, lessor shall have the right to retain the improvements or require the lessee to remove the same and restore the premises to a similar condition prior to any development or improvements, to the extent reasonably possible. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-10)

§13-183-27 Surrender of mining leases. Any lessee of a mining lease, who has complied fully with all the terms, covenants, and conditions of an existing lease and provisions of these rules, may with the consent of and under the terms and conditions set by the board surrender at any time and from time to time all or any part of the mining lease or the land contained therein upon payment as consideration therefor two years' rent prorated upon the portion of the lease or land surrendered pursuant to §182-13, Hawaii Revised Statutes, unless the law provides otherwise. Upon any approved surrender, the lessee shall be relieved of all further obligations with respect to the lands so surrendered except for previous activities conducted on the land or under the lease. A mining lease may also be surrendered if, as a result of a final determination by a court of competent jurisdiction, the lessee is found to have acquired no rights in or to the minerals on reserved lands, nor the right to exploit the same, pursuant to the lease, and, in such event, the lessee shall be reimbursed for all rentals, royalties, and payments paid to the State pursuant to the lease. The lessee shall be entitled to all equipment, buildings, and plants placed on the land surrendered and the lessor may require the lessee to remove the same and restore the premises to a similar condition prior to any development or improvements, to the extent reasonably possible. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-13)

§13-183-28 Number of mining leases; undeveloped acreage limitations. (a) There shall be no limit on the number of geothermal mining leases that may be granted to a person undertaking any geothermal mining operation or production, unless otherwise authorized by law.

(b) No person shall, unless it is a charitable trust existing in the State of Hawaii on the effective date of these rules, take hold, own, or control at any one time, whether acquired from the board under these rules by lease or approved transfer of lease, or indirectly, a divided or undivided interest in geothermal resources in state or reserved lands in excess of 80,000 undeveloped acres. This acreage limitation may be

increased by the board where, in the opinion of the board, the increase is in the best interest of the State in the promotion and development of geothermal resources.

(c) In computing total holdings, ownership, or control, no person shall be charged with an interest through any association, firm or corporation unless it is the beneficial owner of ten percent or more of the stock or other instruments of ownership or control of the association, firm, or corporation. In this case and in the case of an undivided interest, the amount of acreage chargeable to the person shall be the pro-rata amount of acreage based on the percentage of stocks or interest owned. Persons owning an overriding royalty or other interest determined by or payable out of a percentage of production from a lease shall be charged with an interest. Undeveloped acreage which subsequently is unitized with the approval of the board or is actually producing geothermal resources in commercial quantities and paying production royalties shall not be included in accountable interests in determining the 80,000-acre undeveloped acreage limitation. Any and all leases creating the excess undeveloped acreage may be canceled or forfeited in their entirety by the board. A person may hold an unlimited interest in acreage which is producing geothermal resources and paying production royalties. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §182-8)

*Mining lease*

§13-183-29 Term of mining leases. (a) The term of all mining leases shall consist of a primary ten-year period and continuation periods which shall be as provided herein, except that the sum of primary and all continuation periods of the leases shall not exceed sixty-five years from the effective date of the initial lease. The effective date of all leases shall be the first day of the month following the board's signing of the lease.

(b) If during the primary period of a mining lease, geothermal resources or by-products are being produced or utilized in commercial quantities, that lease shall continue for so long thereafter as geothermal resources or by-products are produced or utilized in commercial quantities subject to the limitation of subsection (a) herein. Production or utilization of geothermal resources in commercial quantities for purposes of this subsection shall be deemed to include the completion of one or more wells producing or capable of producing geothermal resources for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than fifteen years from the date of commencement of the primary term of the lease.

(c) If, at the end of the primary term of a mining lease, geothermal resources are not being pro-

duced from the leased land, but the lessee is actively engaged in drilling operations under said lease below the depth of 1,000 feet or at a lesser depth of productive zone in a diligent manner, that lease may be continued, at the discretion of the board, for a period of not more than five years and for as long thereafter as geothermal resources are being produced or utilized in commercial quantities subject to the sixty-five year limit provided in subsection (a) herein.

(d) If the board determines that the lessee has voluntarily shut in production for lack of a market but is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the lease shall be continued in force for the duration of the primary term or for five years after shut-in, whichever is longer, upon payment of rentals, or the lease may be terminated by the board. The chairperson shall continue to review shut-in leases at least once every five years until production in commercial quantities occurs, the lease is terminated by the board for lessee's lack of due diligence, or surrender by the lessee.

(e) If production of geothermal resources under a lease ceases from any cause after expiration of the primary term or before the end of the primary term if production has commenced, that lease shall continue so long as the lessee actively and continuously engages in drilling or reworking operations which shall be commenced within one hundred eighty days after cessation of production. Continuous drilling of reworking operations shall be deemed to have occurred if no more than one hundred eighty days elapses between cessation of operations on one well and commencement of operations on the same or another well. If the operations are successful, the lease shall continue for so long thereafter as geothermal resources are produced or utilized in commercial quantities, subject to subsection (a) herein.

(f) If the lessee is rendered unable wholly or in part by force majeure to carry out its obligations under a lease, lessee shall give to lessor prompt written notice of the force majeure. Any obligations of the lessee to perform so far as they are affected by the force majeure shall be suspended during the continuance of the force majeure and the primary term or any continuation period shall be extended for a period equal to the period of suspended performance caused by the force majeure. Lessee shall use all possible diligence to remove or correct the force majeure; provided, however, that any cure shall not require the settlement of strikes, lockouts or other labor difficulties. In no event shall any extension affect the sixty-five year term of any lease. [Eff. JUN 22 1991 ]

(Auth: HRS §182-14) (Imp: HRS §182-7)

§13-183-30 Rentals. (a) The lessee of a mining lease shall pay to the State in advance each year the annual rental specified for each acre or fraction thereof under the lease. The annual rental for the first year of the lease shall be due and payable and shall be received in the office of the department in Honolulu within two days after the acceptance of the bid by the board and the \$500 bid deposit shall be credited against the sum. Where a lease is granted without public auction, the board may impose other terms and conditions for first-year rental payment. Second year and subsequent rental payments shall be received in the office of the department in Honolulu on or before the anniversary date of the lease.

(b) Annual rentals for each acre or fraction thereof under lease by public auction or negotiation shall be at the price bid at public auction or as set by the board, respectively. The annual rental due and paid each year shall be credited against production royalties due and accrued during that same year. The annual rental due a given year shall not be credited against production royalties due in future years.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-9)

§13-183-31 Royalties on geothermal production.

(a) The rate of the royalty to be paid to the State for the production of geothermal resources shall be determined by the board prior to the bidding for or granting of a mining lease, but the rate shall not be less than ten percent nor more than twenty percent of the gross amount or value of the geothermal resources produced under the lease as measured at the wellhead and sold or utilized by the lessee. The board may readjust the rate of royalty of any geothermal mining lease at not less than fifteen-year intervals beginning thirty-five years after the effective date of the lease. In the event of any readjustment, the rate of royalty may not be increased by more than fifty percent over the royalty paid during the preceding period. The board shall give notice of any proposed readjustment of royalties and unless the lessee files with the board objection to the proposed royalties or surrendered the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with the terms and conditions. If the lessee files objections and no agreement can be reached between the board and the lessee within a period of not less than sixty days, the lease may be terminated by either party. In no event shall the rate of the royalty payable exceed twenty percent of the gross value. In addition to the above, the board may also impose a royalty based on a percentage of the net profit, cash bonus, or otherwise.



(b) For the purpose of computing royalties, the amount or value of geothermal resources produced shall be determined as the gross proceeds received by the mining lessee from the sale or use of geothermal resources produced from the leased land as measured at the wellhead. In the event that geothermal production hereunder is not sold to a third party but used or furnished to a plant owned or controlled by the lessee, the gross proceeds of the production for purposes of computing royalties shall be that which is reasonably equal to the gross proceeds being paid to other geothermal producers for geothermal resources of like quality and quantity under similar conditions after deducting any and all treating, processing, and transportation costs incurred. In the case of furnished geothermal resources, should the board believe that any stated charges imposed and deducted are excessive or that the stated sales price received by the lessee is unreasonable, the lessee shall, upon thirty days notice, provide the board with evidence that the charges or price or both comply with the above requirement of reasonably equal gross proceeds. Gross proceeds shall not be deemed to include excise, production, severance, or sales taxes or other taxes imposed on the lessees by reason of the production, severance, or sale of geothermal resources or geothermal by-products.

(c) The rate of royalty to be paid to the State for any geothermal by-product contained in and extracted from the effluence produced shall be not less than five percent nor more than ten percent of the gross proceeds received by the lessee from the sale of any by-product produced under the lease as measured at the wellhead and sold, exchanged, or otherwise disposed of by the lessee, including demineralized or desalted water, after deducting any treating, processing, and transportation costs incurred. No payment of a royalty shall be required on the water if it is used in plant operation for cooling or generation of electric energy or is reinjected into the sub-surface. No royalty shall be paid for geothermal by-products used or consumed by lessee in the production operations. The board may readjust the rate of royalties for the production of geothermal by-products in the same manner and under the same terms prescribed in subsection (a) herein; provided that the rate of royalty for geothermal by-products payable shall not exceed ten percent of the gross proceeds. Gross proceeds shall not include the taxes described in subsection (b) herein.

(d) The lessee shall make payment of royalties to the board in Honolulu within thirty days after the end of each calendar month and accompany the payment with a certified true and correct written statement by the lessee, showing the amount of each geothermal resource produced, sold, used, and otherwise disposed of, and the

basis for computation and determination of royalties. Lessee shall furnish other data as may be necessary to enable the board to audit and verify all royalties due and payable to the State.

(e) Metering equipment shall be maintained and operated by lessee in a manner that meets acceptable standards of accuracy consistent with geothermal industrial practices. Use of the equipment shall be discontinued at any time upon determination by the chairperson that the standards of accuracy or quality are not being maintained. If the equipment is found defective, the chairperson shall determine the quantity and quality of production.

(f) The lessee shall furnish the chairperson the results of periodic tests showing the content of by-products in the produced geothermal resources. Tests shall be taken as specified by the chairperson and by the method of testing approved by him; provided that tests not consistent with industrial practices shall be conducted at the expense of the State. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §132-7)

§13-183-32 Commingling. Lessee shall have the right, at its election prior to sale, to commingle geothermal resources produced from the leased land with that produced from other leases held by lessee or by other lessees as specified in the lessee's approved plan of operation for the lease. Prior to commingling of geothermal production the lessee shall determine the quantities and value of the production upon which royalties are due under the lease and shall make all determinations, measurements, and samples in accordance with good geothermal industrial practices. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §§182-7, 182-8, 182-14)

§13-183-33 Unit or cooperative plans. (a) For the purpose of more properly conserving the natural resources of any geothermal pool, field, or like area, lessees under leases issued by the board, may, with the written consent of the board, utilize the state lands under a unit, cooperative, or other plan of development or operation with other state, federal, or privately owned lands. Applications shall be filed with the board which shall certify whether the plan is necessary or advisable in the public interest. The board may require whatever documents or data it deems necessary to make its determination. The board may, with the consent of its lessees modify and change any and all terms of leases issued by it which are committed to the unit, cooperative, or other plans of development or operations.

(b) The unit agreement shall describe the separate tracts comprising the unit, disclose the apportion-

ment of the production or royalties and costs to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the State. The unit agreement shall be signed by or in behalf of all necessary parties before being submitted to the board. It shall be effective only after approval by the board. The unit operator shall be a person as defined by these rules and approved by the board.

(c) The owners of any right, title, or interest in the geothermal resources to be developed or operated under an agreement are regarded as proper parties to a proposed agreement. All the owners shall be invited to join as parties to the agreement. If any owner fails or refuses to join the agreement, the proponent of the agreement shall declare this to the board and shall submit evidence of efforts made to obtain joinder of the owner and the reasons for nonjoinder.

(d) In lieu of separate bonds required for each lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond or a personal bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the leases subject thereto and these rules. Personal bonds shall be accompanied by a deposit of negotiable federal securities in a sum equal in value to the amount of the bond and by a proper conveyance to the board with full authority to sell the securities in case of default in the performance of the obligations assumed. The liability under the bond shall be for the amount as the board shall determine to be adequate to protect the interests of the State. Additional bond coverage may be required whenever deemed necessary by the board. In case of changes of unit operator, a new bond shall be filed or a consent of surety to the change in principal under the existing bond shall be filed with the board.

(e) Any modification of an approved agreement will require approval of the board under procedures cited in subsection (a) herein.

(f) The term of all leases included in any cooperative or unit plan of development or operation shall be continued automatically for the term of the unit or cooperative agreement, but in no event beyond that time provided in S13-183-29. Rentals or royalties on leases so extended shall be at the rate specified in the lease.

(g) Any lease which is to be eliminated from any cooperative or unit plan of development or operation, or any lease which shall be in effect at the termination of any cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the term of the lease or for one year after its elimination from the plan or agreement or the termination

thereof, whichever is longer, and so long thereafter as lessee engages in diligent and continuous drilling as provided in §13-183-61, or so long thereafter as geothermal resources are produced in commercial quantities, but in no event beyond the time provided in §13-183-29(a).

(h) Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder shall be required to file evidence that an agreement has been entered into with the unit operator for the development and operation of the lands in a lease if issued to the unit operator under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into agreement. If the statement is acceptable, the unit operator will be permitted to operate independently, but will be required to perform operations in a manner which the board deems to be consistent with the unit operations.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-9.5)

§13-183-34 Bond requirements. Every lessee of a mining lease or transferee thereof shall file with the board, a bond in the amount of \$10,000 in a form approved by the board and made payable to the State, conditioned upon faithful performance of all requirements of chapter 182, Hawaii Revised Statutes, of these rules, and of the mining lease, and also conditioned upon full payment by the lessee of all damages suffered by the occupiers, in the case of state and reserved lands. If any person holds more than one lease in the State it may file with the board in lieu of separate bonds for each lease or a blanket bond in the amount of \$50,000. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-3)

§13-183-35 Liability insurance. (a) Prior to entry upon the leased lands, lessee or lessee's assignee, sublessee, or transferee shall cause to be secured and to be thereafter maintained in force during the term of the lease, public liability and property damage insurance from an insurance company licensed to do business in the State in amounts to be determined by the board and stated in the geothermal lease for injuries to persons, wrongful death, and damages to property caused by any occupancy, use, operations, or any other activity on leased lands carried on by lessee, or lessee's assignee, sublessee, or transferee, and its agents or contractors in connection therewith. Liability coverage for explosion, collapse, and underground hazards are to be included prior to any drilling of a well for geothermal discovery, evaluation, or production. Lessee shall evidence the additional coverage to

*Bonds  
for lease  
requirements*

the chairperson prior to initiation of drilling operations. If the land surface and improvements thereon covered by the lease have been sold or leased by the State to a person other than the lessee, the owner or lessee of surface rights and improvements shall be a named insured. The State, any owner, and any lessee of surface rights and improvements shall be a named insured in all instances. These policy or policies of liability insurance shall contain the following special endorsement:

"The State of Hawaii, the Hawaii State Board of Land and Natural Resources, the Chairperson of the Board of Land and Natural Resources, the Department of Land and Natural Resources, and (herein insert name of owner or lessee of surface rights, if applicable) and the officers, employees and agents of each and every of the foregoing (hereinafter referred to as "named insureds") are insureds under the terms of this policy; provided, however, said insureds shall not be insured hereunder for any primary negligence or misconduct on their part, but shall be insured hereunder for secondary negligence or misconduct, which shall include the failure to discover and cause to be corrected the negligence or misconduct of lessee, its agents or contractors. This insurance policy shall not be cancelled without thirty days prior written notice to the Board and all named insured. None of the foregoing additional insureds are liable for the payment of premiums or assessments on this policy."

(b) No cancellation provision in any insurance policy shall release the lessee of duty to furnish insurance during the term of this contract. The policy or policies shall be underwritten to the satisfaction of the chairperson. A signed and complete certificate of insurance, with the endorsement required by this subsection, shall be submitted to the chairperson prior to entry upon the leased land. At least thirty days prior to the expiration of any policy, a signed and complete certificate of insurance, with the endorsement required by this paragraph showing that the insurance coverage has been renewed or extended, shall be filed with the chairperson. [Eff. JUN 22 1981]

(Auth: HRS §182-14) (Imp: HRS §§182-3, 182-14)

§13-183-36 Hold harmless. In addition to the insurance requirements of §13-183-35 the mining lessee shall expressly agree to hold harmless and indemnify the State and its divisions, departments, agencies, officers, agents and employees, together with the owner or lessee of the surface rights of the leased land, if any, from any and all liabilities and claims for damages or

suits for or by reason of death or injury to any person or damage to property of any kind whatsoever, whether the person or property of mining lessee, his agents, employees, contractors, or invitees, or third persons, from any cause or causes whatsoever caused by any occupancy, use, operation or any other activity on the leased land or its approaches, carried on by the mining lessee, his agents, employees, contractors, or invitees, in connection therewith; and the mining lessee shall covenant and agree to indemnify and save harmless the State, the board, the chairperson, the department, owner or lessee of surface rights if there be one, and their officers, agents, and employees from all liabilities, charges, expenses (including counsel fees) and costs on account of or by reason of any death or injury, damage, liabilities, claims, suits or losses. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-37 Title. The State does not warrant title to the leased lands or the geothermal resources and associated by-products which may be discovered thereon; the lease is issued only under the title as the State may have as of the effective date of the lease or may thereafter acquire. If the interest owned by the State in the leased lands includes less than the entire interest in the geothermal resources and associated by-products for which royalty is payable as determined by the courts or otherwise, then the rents and royalties provided for in the lease shall be paid to the State only in the proportion which its interest bears to the whole for which royalty is payable, and the State shall be liable to those persons for any prior payments made as adjudged by the courts or otherwise; provided, however, that the State shall not be liable for any damages sustained by the lessee. The geothermal resources shall be considered a property right. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-2)

#### Subchapter 4. Leases; Procedure for State Lands

##### §13-183-38 Application to board; filing fee.

(a) Any person as defined in these rules may apply to the board for a mining lease on state lands. The board at its discretion may offer the lands for lease. The applicant shall submit three copies of a written application on forms provided by the department and all application forms shall be completed in full, signed by the applicant or his authorized representative with proof of authorization, three copies of all necessary exhibits, and the filing fee.

(b) Each application for a mining lease shall be accompanied by a non-refundable filing fee in the amount of \$100. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-4)

§13-183-39 Lease application exhibits. (a) Each application for a geothermal mining lease shall be accompanied by the following exhibits:

- (1) An accurate description and map of the land desired to be leased.
- (2) A description of the known or potential geothermal resource desired to be leased for exploration and development.
- (3) Brief preliminary proposal of plan for geothermal exploration and development and an assessment of the environmental impact from geothermal resource exploration and development.
- (4) Certificate that the applicant is qualified to hold a mining lease under §13-183-21 and that the officer executing the application is authorized to act on behalf of the partnership, corporation, or association, and that geothermal interests held do not exceed the acreage limitation prescribed in §13-183-28.

(b) Information furnished by the applicant shall be kept confidential by the board until the land has been offered for leasing at public auction and for the additional period of time as the board may deem necessary. Only a description of the land nominated for leasing may be made public by the board.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-4)

§13-183-40 Public notice of lease applications. Public notice of lease applications shall be as provided in §182-4, Hawaii Revised Statutes.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-4)

§13-183-41 Consideration of applications. Within twelve weeks from the date of the first publication of notice of a lease application for state land or as soon as practicable thereafter, the board may hold a public hearing to decide whether or not to lease the land and if deemed appropriate may modify the area sought to be leased. Prior to making its decision, the board may require an applicant to submit a full evaluation of the potential effect of geothermal exploration and development on the environment, fish and wildlife resources, aesthetics, population, and other resources in the area. This evaluation shall consider the poten-

tial impact of possible geothermal development and utilization including the construction of power generating plants and transmission facilities. The board shall consider the views and recommendations of other governmental agencies, organizations, industries and lease applicants and shall consider all other potential factors, such as use of the land and its natural resources, the need for geothermal energy development and socio-economic conditions consistent with multiple-use management principles. The board's decision whether or not to lease and selection of the area to be offered for lease shall be final and not subject to judicial review.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-4)

§13-183-42 Rejection of lease applications.

If the board determines that the existing or reasonably foreseeable future use of the land being sought for lease would be of greater benefit to the State than the proposed mining use of the land, it may disapprove the application for a mining lease of the land.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-2)

§13-183-43 Approval of lease applications.

If the board determines that the proposed mining use of the land would be of greater benefit to the State than the existing or reasonably foreseeable future use of the land, the board shall determine the area to be offered for lease and determine any special terms and conditions to be included in the lease to provide for orderly and optimum geothermal development, to protect the environment, to permit use of the land for other purposes, and to protect other natural resources. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §182-2)

§13-183-44 Public notice of lease sales.

When the board has approved a mining lease to be offered for sale by competitive bidding at public auction, it shall cause a notice to be published in a newspaper of general circulation in the State and in the county where the land is located at least once in each of three successive weeks, setting forth the time and place of public auction, the description of the land, the geothermal rights to be leased, and the terms and conditions of the lease sale including upset or minimum rental rate, royalties, cash bonus, percentage of the net profit or otherwise. The notice shall also indicate that a proposed plan of operation shall be filed and approved before the lessee shall be permitted to commence operations of any kind. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §182-4)

*Procedure  
for public  
notice - lease  
state lands.*



§13-183-45 Qualification of bidders. At least thirty days before the announced date of any public auction, all bidders shall have submitted to the board evidence of their experience and financial ability to conduct geothermal explorations, drill geothermal wells, and develop geothermal resources. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§182-14, 171-6)

§13-183-46 Bidding requirements. On or before the announced date of the public auction, each prospective bidder shall deposit with the board a certified or cashier's check payable to the State in the amount of \$500 and submit a statement that the person is eligible to hold a mining lease as prescribed in §13-183-21. The deposit shall be forfeited by prospective bidders who fail to bid or returned to the unsuccessful bidders. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-9)

§13-183-47 Award and execution of leases.  
(a) The lease offered for bid shall be awarded to the highest responsible qualified bidder. The board reserves the right to reject any and all bids or waive any defects which will be in the best interest of the State. If the board fails to award the lease within sixty days after the date of the public auction, all bids for that lease will be considered rejected. Deposits on rejected bids shall be returned. Within two days after acceptance by the board of the highest responsible bid, the successful bidder shall pay to the board the amount of the first year's rental bid and the \$500 deposit shall be credited against the sum.

(b) Three copies of the lease will be sent to the successful bidder who shall within thirty days from delivery thereof be required to execute and return them, and to file the required bond or bonds. When the three copies of the lease are executed by the successful bidder and returned to the chairperson, the lease will be executed by the authorized officers of the board and a copy will be mailed to the lessee. If the successful bidder fails to execute the lease or otherwise comply with the applicable rules, their deposit will be forfeited. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§182-9, 182-14)

#### Subchapter 5. Leases; Procedures for Reserved Lands

§13-183-48 Application to board. Applications for mining lease on reserved lands shall be made to the board in accordance with §13-183-38, 13-183-39, 13-183-42 and 13-183-43. [Eff. ]  
(Auth: HRS §182-14) (Imp: HRS §182-5)

§13-183-49. Approval of leasing by public auction. If the occupier or the assignee of the right to obtain a mining lease fails to apply for a mining lease within six months from the date of notice from the board of its finding of public interest that the reserved lands be mined, a mining lease shall be granted by public auction under subchapter 4, provided that the bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to develop the geothermal resources reserved to the State. The board may also require the payment of a cash bonus, percentage of the net profit, or otherwise. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §182-5)

§13-183-50 Approval of leasing without public auction. The board may, by the vote of two-thirds of its voting members, grant a mining lease on reserved lands to the occupier thereof or the occupier's assignee of the right to apply for a lease thereof without public auction pursuant to §182-5, Hawaii Revised Statutes. The board shall determine the annual rental to be paid to the State for the right to develop and utilize the geothermal resources reserved to the state and the royalty on geothermal production as prescribed in §13-183-31. The board may also require the payment of cash bonus, percentage of the net profit, or otherwise. [Eff. JUN 22 1981] (Auth: HRS §182-14) (Imp: HRS §182-5)

#### Subchapter 6. Leases; Surface Rights and Obligations

§13-183-51 Compensation to occupiers. The mining lessee shall negotiate in good faith with the occupier of state or reserved lands for the settlement of all claims for damages to occupier's crops, improvements, or surface of the land caused by the mining lessee's operations. The lessee shall hold the board exempt and harmless from and against any and all damage claims. Nothing herein shall be construed to prevent the occupier of reserved lands from demanding and receiving rentals from the lessee of the mining lease. The occupier may, in writing before or within thirty days after the public auction, notify the board to either have the amount of damages or the amount of rentals be paid as compensation as a result of the award of a mining lease. Compensation shall be determined by arbitration with the successful bidder and shall proceed in accordance with chapter 658 of the Hawaii Revised Statutes. The arbitrators in fixing the amount of damages to be paid to the occupier shall award an amount

which, in their judgment, shall fairly compensate the occupier for the damages suffered to crops or improvements or to the surface or condition of the land caused by the mining or other incidental operations, including exploratory work, and a reasonable rental for the use of the surface of the land. If the arbitrators are unable, for any reason, to determine the amount of the damages, the arbitration hearing may be continued for a reasonable time to determine more accurately the amount of damages suffered. Nothing herein shall prevent the occupier from reopening the arbitration in the event of further damages. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §§182-3, 182-15)

§13-183-52 Mining lessee's rights. The lessee shall be entitled to use and occupy only so much of the surface of leased lands as may be required for all purposes reasonably incidental to exploration for, drilling for, production and marketing of geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with an approved plan of operation and amendments thereto, as provided in §13-183-55 and 13-183-56.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-2, 182-7)

§13-183-53 General conditions. (a) Use of state lands under the jurisdiction and control of the board are subject to the supervision of the board. Use of state lands under the control of the other state agencies are subject to the supervision of the appropriate state agency consistent with these rules.

(b) The board reserves the right to lease, sell or otherwise dispose of the surface of state lands embraced within a mining lease, insofar as the surface is not necessary for use by the lessee in the exploration, development and production of the geothermal resources and associated by-products, but any lease, sale, or other disposal of surface rights if made, shall be subject to the rights of the mining lessee.

(c) The chairperson shall be permitted at all reasonable times to go in and upon the leased lands and premises, during the term of a mining lease, to inspect the operations and the products obtained from the leased lands and to post any notice that the board may deem fit and proper.

(d) During operations, the lessee shall regulate public access and vehicular traffic to cause the least practicable interference with the use of the surface of the land and to protect human life, wildlife, livestock

and property from hazards associated with the operations. For this purpose, the lessee shall provide warnings, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the chairperson as part of the plan of operations and amendments thereto required under §13-183-55.

(e) Lessee shall take all necessary steps in the exploration, development, production and marketing of geothermal resources to avoid a threat to life or property or posing an unreasonable risk to subsurface, surface or atmospheric resources. [Eff. JUN 22 1981]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

## Subchapter 7. Leases; Mining Operations

§13-183-54 General terms. (a) The operator under a lease shall conduct all operations in a manner that conforms to the most prudent practices and engineering principles in use in the industry. Operations shall be conducted in a manner that protects the natural resources including without limitation, geothermal resources, and to obtain efficiently the maximum ultimate recovery of geothermal resources, consistent with other uses of the land with minimal impact on the environment. Operations shall be conducted with due regard for the safety and health of employees. The operator shall promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and shall notify the chairperson of all accidents within twenty-four hours and submit a written report within thirty days.

(b) The operator of a lease shall comply with all of the requirements, laws, rules, and regulations of the United States, the State and the appropriate county pertaining to the use of the premises or conduct of the operation.

(c) The operator of a lease shall take all reasonable precautions to prevent waste and damage to any natural resources including:

- (1) Vegetation, forests, and fish and wildlife;
- (2) Injury or damage to persons, real or personal property; and
- (3) Degradation of the environment.

The chairperson may inspect lessee's operations and issue orders necessary to accomplish these purposes.

(d) The chairperson is authorized to shut down any operation which is determined unsafe or causing or can cause pollution of the natural environment or waste of natural resources including geothermal resources upon failure by lessee to take timely, corrective measures previously ordered by the chairperson.

*Chairperson  
can shut-  
down operations*

(e) The lessee shall designate a local representative empowered to receive service of civil or criminal process, and notices and orders of the chairperson issued pursuant to these rules as prescribed in §13-183-64.

(f) In all cases where exploration or mining operations are not to be conducted by the lessee but are to be conducted under an approved operating agreement, assignment or other arrangement, a designation of operator shall be submitted to the chairperson prior to commencement of operations. The designation shall be accepted as authority of the operator or the local representative to act for the mining lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator shall be immediately reported, in writing, to the chairperson.

(g) The lessee shall commence mining operations on the leased lands within three years from the date of execution of the lease or upon the expiration of any research period approved by the board under §132-7, Hawaii Revised Statutes; provided that if the operator holds more than one lease this provision shall not apply to the other leases so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one lease. Notwithstanding the above, the board may impose more stringent development requirements for any particular lease.

[Eff. JUN 22 1981] (Auth: HRS §182-14)

(Imp: HRS §§182-7, 182-14)

§13-183-55 Plan of operations required. (a) A lessee shall not commence operations of any kind prior to submitting to the chairperson for board approval a plan of operations. The plan shall include:

- (1) The proposed location and elevation above sea level of derrick, proposed depth, bottom hole location, casing program, proposed well completion program and the size and shape of drilling site, excavation and grading planned, and location of existing and proposed access roads;
- (2) Existing and planned access, access controls and lateral roads;
- (3) Location and source of water supply and road building material;
- (4) Location of camp sites, air-strips, and other supporting facilities;
- (5) Other areas of potential surface disturbance;
- (6) The topographic features of the land and the drainage patterns;
- (7) Methods for disposing of well effluent and other waste;

*Plan of operations necessary prior to any work!*

- (8) A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of:
  - (A) Fires,
  - (B) Soil erosion,
  - (C) Pollution of the surface and ground water,
  - (D) Damage to fish and wildlife or other natural resources,
  - (E) Air and noise pollution and
  - (F) Hazards to public health and safety during lease activities.
- (9) A geologist's preliminary survey report on the surface and sub-surface geology, nature and occurrence of the known or potential geothermal resources, surface water resources, and ground water resources;
- (10) All pertinent information or data which the chairperson may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment;
- (11) Provisions for monitoring deemed necessary by the chairperson to insure compliance with these rules for the operations under the plan.

(b) The information required above for items (1) through (6) shall be shown on a map or maps of 1:24,000 scale or larger, when required by the board.

(c) The board shall either approve, subject to the requirements of chapter 343 Hawaii Revised Statutes and to any terms or conditions it may specify at its discretion, or disapprove the plan of operation within sixty calendar days after the date of receipt of the plan. If the board disapproves the plan of operations it shall notify the applicant and the decision may be appealed as provided in §13-183-5. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§182-7. 182-14)

*Modifications*  
§13-183-56 Amendments to plan operations. After completion of all operations authorized under any previously approved plan of operation, the lessee shall not begin to redrill, repair, deepen, plug back, shoot, or plug and abandon any well, make casing tests, alter the casing or liner, stimulate production, change the method of recovering production, or use any formation or well for brine or fluid injection until the chairperson has received and approved in writing a new or amended plan of operation. In an emergency a lessee may take action to prevent damage without receiving prior approval from the chairperson; provided, that the lessee shall report the action to the chairperson as soon as possible.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§182-7, 182-14)

§13-183-57 Drilling operations. (a) Upon commencement of drilling operations, the lessee shall mark each drilling site and each completed well site in a conspicuous place with the lessee's name or the name of the operator, the lease number, and the number of the well. The lessee shall take all necessary means and precautions to preserve these markings.

(b) The lessee shall diligently take all necessary precautions to:

- (1) Keep all wells under control at all times;
- (2) Utilize trained and competent personnel;
- (3) Utilize properly maintained equipment and materials; and
- (4) Use operating practices which insure the safety of life and property.

The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used shall be based on sound engineering principles and shall take into account apparent geothermal gradients, depths, and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area.

(c) When necessary or advisable, the chairperson shall require that adequate samples be taken and tests or surveys consistent with industry practices be made without cost to the State, to determine:

- (1) The identity and character of geologic formations;
- (2) The quantity and quality of geothermal resources;
- (3) Pressures, temperatures, rate of heat, and fluid flow; and
- (4) Whether or not operations are being conducted in the best interest of the public.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

§13-183-58 Waste prevention, offset wells and geothermal by-products. (a) All mining leases shall be subject to the condition that the lessee shall, in conducting exploratory development and producing operations, use all reasonable precautions to prevent waste and conserve and provide for optimum use of geothermal resources and other natural resources found or developed in the leased lands.

(b) If any waste of geothermal resources or by-products result from the willful misconduct or negli-

gence of the operator or if the operator fails to take corrective action within a reasonable time after being notified in writing by the chairperson, the board shall determine the value of the loss or waste and the compensation due to the board, using the method for computing royalties set out in §13-183-31 (b) (c). Payment for the losses will be paid when billed. The board's determination of the value of the waste may be appealed as provided in §13-183-5.

(c) In the event any well located on other than state or reserved land is draining geothermal resources in commercial quantities from any land leased from the State, the board may notify the lessee in writing to drill an offset well thereto, and within one hundred twenty days from the date of the notice or the additional time as may be allowed by the chairperson, the lessee shall commence operations for the drilling of an offset well on the leased land to the same zone as that zone from which the well is producing geothermal resources or shall unitize with the well that is draining state land or pay to the State compensatory royalty. For the purpose of this section an offset well shall mean a well which a reasonably prudent geothermal operator would drill under similar circumstances. There shall be no obligation to unitize or pay compensatory royalty. To the extent provided by law, the board may require unitization of leases and lands involved.

(d) Subject to lessee's right to surrender a mining lease, where the board determines that production, use, or conversion of geothermal resources is susceptible of producing a by-product or by-products, including demineralized water contained in or derived from the geothermal resources and deemed suitable for beneficial use in accordance with chapter 177, Hawaii Revised Statutes, the board may require substantial production or use thereof unless the board determines that beneficial production or use would not be in the interest of conservation of natural resources, nor economically feasible or would not otherwise be in the public interest. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§178-3, 182-7, 182-9.5)

§13-183-59 Protection of other resources.

(a) The lessee shall remove any derrick, equipment, or facilities within sixty days after lessee has ceased making use thereof in its operations.

(b) All permanent operating sites shall be landscaped or fenced to screen them from public view. The landscaping or fencing shall be approved in advance by the State and kept in good condition.

(c) All drilling and production operations shall be conducted in a manner that eliminates as far as practicable dust, noise, vibration, or noxious odors.

*Protecting  
existing areas,  
roadways, etc.*



Operating sites shall be kept neat, clean, and safe. Drilling dust shall be controlled to prevent widespread pollution. Determination of what is considered detrimental rests solely with the chairperson.

(d) Wastes shall be discharged in accordance with all federal, state, and local requirements.

(e) Any operation disturbing the soil surface, including road building, construction, and movement of heavy equipment in support of or relating to specific geothermal exploration or development activities shall be conducted in a manner that will not result in unreasonable damage to trees and plant cover, soil erosion, or degradation of water resources.

(f) Existing roads, except public roads, and bridges on or serving the area under lease shall be maintained in a condition equal to or better than that before use. New roads and bridges shall be located, constructed, and maintained in accordance with the appropriate county requirements.

(g) Marketable timber on state or reserved lands which are damaged, destroyed, or used shall be compensated for at fair market value to the owners of the land. Borrow pit material shall not be obtained from state or reserved lands without permission and payment of market value to the owner.

(h) Improvements, structures, telephone lines, trails, ditches, pipelines, water developments, fences, permanent improvements, and crops of the owners shall be protected from damage and repaired or replaced when damaged or monetary compensation paid to the owners for the damage.

(i) Access to drilling or production sites by the public shall be controlled by the lessee to prevent accidents or injury to persons or property.

(j) Areas cleared and graded for drilling and production facility sites shall be kept to a reasonable number and size, and are subject to board approval.

(k) Lessee shall conduct its operations in a manner which will not interfere with the right of the public to use public lands and waters.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-14)

§13-183-60 Suspension of operations. In the event of any disaster and pollution, or likelihood of either, having or capable of having a detrimental effect on public health, safety, welfare, or the environment caused in any manner or resulting from operations under a lease, the lessee shall suspend any testing, drilling, and production operations, except those which are corrective, or mitigative, and immediately and promptly notify the chairperson. The drilling and production operations shall not be resumed

until adequate corrective measures have been taken and authorization for resumption of operations has been made by the chairperson. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

*Lease can be terminated!*

§13-183-61 Diligent operations required. The lessee shall be diligent in the exploration or development of the geothermal resources on the leased lands. Failure to perform diligent operations may subject the lease to termination by the board. Diligent operations mean exploratory or development operations on the leased lands, including without limitation geochemical surveys, heat flow measurements, core drilling, or drilling of a well for discovery, evaluation, or production of geothermal resources. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-62 Records and reports. (a) Lessee shall at all times maintain full and accurate records of production and payments relating to lessee's operations and activities upon and in connection with the leased lands. All books and records of lessee pertaining to or necessary in determining royalty payments shall be open to inspection at all reasonable times by the authorized representatives of the department.

(b) The lessee shall furnish to the board for its confidential use, copies of all physical and factual exploration results, logs, and surveys which may be conducted, well test data, and other data resulting from operations under the lease. The information shall be kept confidential as a trade secret for a period of one year from date of receipt, or longer at the discretion of the board. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§177-5, 182-14)

§13-183-63 Restoration of premises. Upon the revocation, surrender, or expiration of any mining lease, the lessor or surface owner may require the lessee to restore the lands covered by the lease to their original condition insofar as it is reasonable to do so within ninety days thereof, except for the roads, excavations, alterations or other improvements which may be designated for retention by the surface owner, the board or any state agency having jurisdiction over the affected lands. When determined by the board or the state agency, cleared sites and roadways shall be replanted with grass, shrubs, or trees by the lessee. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§182-14, 182-15)

## Subchapter 8. Drilling; Wells Generally

§13-183-64 Designation of agent. Any person who has drilled, is drilling, or proposes to drill any geothermal well shall designate on forms provided by the department an agent who shall be a resident of the State and upon whom may be served all orders, notices, and processes of the department or any court of law. Every person appointing an agent shall, within five days after the termination of any agency, notify the chairperson in writing of the termination, and unless operations are discontinued, shall appoint a new agent. All changes in the address of an agent shall be recorded with the chairperson within five days of the change of the address. [Eff. JUN 22 1981 ] (Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-65 Applications for permit to drill, modify, modify use, or abandon wells; permits. Prior to drilling, modifying, modifying use, or abandoning of any well, the operator of the well shall file with the chairperson an appropriate application for a permit to any work and shall obtain approval thereof. Each application for a permit shall be made on forms provided by the department and shall contain the following:

- (1) Name, signature and address of the applicant, the owner of the mining rights and the land owner if the applicant is not the land owner.
- (2) The number or other designation by which the well shall be known. The number or designation shall be subject to the chairperson's approval.
- (3) A plot plan showing the tax map key, site elevation, and well location reference to established property corners. A survey by a Hawaii licensed surveyor may be required by the department, if deemed necessary.
- (4) A statement by applicant of the purpose and extent of the proposed work and an estimate of the depths between which discovery, production, injection, or plugging will be attempted.
- (5) A description of the proposed drilling and casing program; and a plan or drawing showing the proposed work and vertical section of the well.
- (6) A statement by applicant agreeing to file a bond meeting the requirements of §13-183-68 with the chairperson within ten calendar days after notification that the application has been approved.

*Bonds* →

*modification*

- (7) A statement by applicant to perform the work and thereafter to operate and maintain the well in accordance with these rules and all other federal, state and county requirements.

(b) Applications for a permit shall be reviewed and acted upon by the chairperson within sixty calendar days after receipt.

(c) Permits shall be valid for a period of 365 calendar days from date of issuance, but may be renewed for an additional period of 180 calendar days at the discretion of the chairperson.

(d) A permit may be suspended or revoked by the chairperson. If it appears that any drilling or well work for which a permit has been issued is not being done in accordance with conditions of the permit or these rules, the chairperson shall notify the permittee to appear before him at a time and place designated in the notice to show cause why the permit should not be suspended or revoked and the well be plugged and abandoned or put in proper condition by the permittee. The notice shall state the grounds for suspension or revocation. After the hearing, the chairperson shall give an order of revocation, suspension or continuation of the permit. The order shall be subject to appeal as provided in §13-183-5. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §§178-5, 182-14)

§13-183-66 Supplementary applications. A supplementary application shall be filed with the chairperson if there is any contemplated change in the original approved application. Written approval of the change shall be received from the chairperson before the change of work is started. In an emergency or when deemed necessary by the chairperson, the chairperson may give verbal approval to the operator to carry out the intent and purpose of these rules. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §§178-5, 182-14)

§13-183-67 Filing fees. Each application for a permit to drill, modify, modify use or abandon a well shall be accompanied by a non-refundable filing fee in the amount of \$100. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §§182-4, 182-5)

§13-183-68 Bonds. (a) Any person who engages in the drilling, redrilling, deepening, maintaining, operating, or abandoning of any well shall file with the chairperson prior to the activity, an indemnity bond in the amount set by the board to protect the interests of the State, but in no case shall the amount be less than \$50,000 for each well or a blanket bond of \$250,000 for any number of wells. The amount of bond set by the board shall include the cost of plugging and abandoning

the well or wells in accordance with subchapter 11 should it be necessary. The bond shall be executed by the person, as principal, and by a surety company qualified to do business in the state, as surety, conditioned that the principal named in the bonds shall faithfully comply with these rules. The bonds shall inure to and indemnify the state and surface owners against all losses, charges, expenses and claims for damages or injuries caused or resulting from the drilling and operation of the wells.

(b) Bonds shall remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned as determined by the chairperson or another valid bond is substituted therefor. Any person who acquires the ownership or operation of any well or wells shall within five days after acquisition file with the chairperson a new indemnity bond or a consent by the surety to the change in principal under the existing bond. [Eff. JUN 22 1981 ]

(Auth: HRS §182-14) (Imp: HRS §182-3)

*Life of  
bonds!*

§13-183-69 Set-back and well spacing. (a) Any well drilled for the discovery or production of geothermal resources or for injection of geothermal resources shall be located more than one hundred feet from the outer boundary of the parcel of land on which the well is situated, or more than one hundred feet from a public road, street, or highway dedicated prior to the commencement of drilling unless modified by the chairperson upon request. Where several contiguous parcels of land under one or more ownerships are operated as a single geothermal resources operating unit, the term "outer boundary line" means the outer boundary line of the lands included in a unit.

(b) The chairperson shall approve proposed well spacing programs or prescribe the modifications to the programs deemed necessary for the proper development and conservation of geothermal resources, considering such factors as:

- (1) Topographic characteristics of the area, hydrologic, geologic, and reservoir characteristics of the area;
- (2) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use;
- (3) Minimization of well interference;
- (4) Unreasonable interference with multiple use of lands; and
- (5) Protection of the environment.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-14)

§13-183-70 Directional drilling. (a) Where the surface of a parcel of land is unsuitable for drilling, a directionally drilled (other than a vertical direction) well may be located upon another parcel which may or may not be contiguous. The location of a well shall be not less than twenty-five feet from the outer boundary of the parcel of which it is located and not less than twenty-five feet from an existing street or road. The production or injection interval of a well shall be not less than one hundred feet from the outer boundary of the parcel into which it is drilled. Directional well surveys shall be filed with the department for all wells directionally drilled.

(b) No well shall be intentionally deviated from the vertical without the chairperson's approval.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

§13-183-71 Casing and cementing requirements.

(a) All wells shall be cased in a manner to protect and prevent or to minimize damage to the environment, ground water resources, geothermal resources, life, health, and property. The permanent well head completion equipment and all casing strings reaching the surface shall provide for adequate well pressure control, operational safety, and protection of all natural resources. Department specifications for casing strings shall be determined on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements described below are general and should be used as guidelines in submitting proposed casing programs required to be filed with applications for permit.

(b) Conductor pipe shall be installed to a depth of a minimum of fifty feet and a maximum of one hundred fifty feet. In special cases the chairperson may allow conductor pipe to be run and cemented at deeper depths. The annular space between the hole and pipe shall be cemented solid to the surface.

(c) Surface casing shall be installed to provide for control of formation fluids, for protection of ground water resources, and for anchorage of blowout-prevention equipment. All surface casing shall be cemented solid to the surface.

(d) Surface casing shall be set to a minimum depth of ten percent of the proposed total depth of the well or five hundred feet, whichever is greater. If usable basal ground water is present or reasonably suspected to exist in the area, the depth of the surface casing shall be approved by the chairperson. If subsurface geological, hydrological, or geothermal condi-

*Construction  
specs and  
information*

tions are to be or within the vicinity of the area to be drilled, then these conditions shall be used in determining and approving the depth of surface casing. A second string of surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent rock formations or a rapidly increasing thermal gradient or rapidly increasing formation pressures are encountered.

(e) Intermediate casing shall be required for protection against anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface.

(f) Production casing may be set above or through the producing or injection zone and cemented above the zones. Sufficient cement shall be used to exclude overlying formation fluids from the zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if installed. If the production casing is lapped into an intermediate string, the casing overlap shall be at least fifty feet, the lap shall be cemented solid and the lap shall be pressure tested to ensure the integrity of the lap.

In order to reduce casing corrosion, production casing used to produce corrosive brine reservoirs shall be of the same nominal inside diameter from the shoe of the casing to the ground surface unless waived by the chairperson.

(g) All cement used in cementing the various types of casing required herein shall contain a high temperature resistant admix, unless this cement requirement is waived by the chairperson due to the particular circumstances existing in the well or the area.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §182-14)

#### §13-183-72 Mud return temperature logging.

The temperature of the return drilling mud shall be monitored continuously during drilling of the surface casing portion of the drill hole. Either a continuous temperature monitoring device shall be installed and maintained in a working condition, or the temperature shall be installed and maintained in a working condition, or the temperature shall be read manually. Return mud temperatures shall be entered into the log book after each joint of pipe has been drilled down (about every thirty feet). [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §§177-5, 178-6, 182-14)

*Temperature  
logging req'd*

*Required well logging*

§13-183-73 Electric well logging. All wells, except observation wells, shall be logged with an induction electrical log, or other approved log from total depth to the bottom of the conductor pipe before installing casing; except in the case where air is used as the drilling medium. This requirement may vary from area to area, depending upon the amount of subsurface geological or hydrological data available and may not be required from total depth of the well under certain conditions, subject to the approval of the chairperson. [Eff. JUN 22 1981 ] (Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-74 Blowout-prevention equipment.  
 (a) Blowout-prevention equipment ("BOPE") capable of shutting-in the well during any operation shall be installed on the surface casing tested and shall be maintained ready for use at all times. BOPE pressure tests may be observed by the chairperson or his designated representative on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and observe BOPE pressure tests on other types of wells shall be made on a well-to-well basis. The chairperson shall be contacted in advance of a scheduled pressure test to allow time for travel to the well site to witness the test.

BOPE installations shall include high temperature-rated packing units and ram rubbers if available and shall have a minimum working-pressure rating equal to or greater than the lesser of:

- (1) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot;
- (2) A pressure equal to the rated burst pressure of the BOPE anchor string; or
- (3) A pressure equal to 2000 psi.

(b) The requirements for blowout-prevention equipment shall be subject to review and modification by the chairperson. The following standards serve as guidelines for preparation of minimum blowout-prevention programs:

- (1) No BOPE is required for known shallow, low temperature, low pressure areas where down-hole water temperatures are less than one hundred degrees Celsius at depths less than five hundred feet or where temperatures and pressures are unknown and the proposed depth of drillis less than five hundred feet.
- (2) CLASS 2M BOPE (API CLASS 2M-A or 2M-RE) is required for low pressure areas where known temperatures are



above one hundred degrees Celsius at depths less than 2,000 feet, or where sub-surface temperatures and pressures are unknown and the proposed depth of drilling is less than 2,000 feet. Equipment shall include:

- (A) An annular BOPE or pipe-ram/ blind-ram BOPE with minimum working-pressure ratings of 1,000 psi installed on the surface casing so that the well can be shut-in at any time;
  - (B) Hydraulic and/or manual actuating system;
  - (C) Kelly cock;
  - (D) A fill-up line installed above the BOPE;
  - (E) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary; and
  - (F) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner so as to permit containment of produced fluids and to minimize any safety hazard to personnel.
- (3) CLASS 3M BOPE (API CLASS 2M-RSRA or EQUIVALENT) is required for medium pressure areas where subsurface pressures are less than 1000 psi or where pressures are unknown and the proposed total depth of the well is greater than 2000 feet. Equipment shall include:
- (A) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working-pressure rating of 2,000 psi installed on the surface casing so that the well can be shut-in at any time and with a double-ram preventer having a mechanical locking device;
  - (B) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary backup system equipped with dual controls, one at the driller's station and one

- at least fifty feet away from the well head;
  - (C) Kelly cock and standpipe valve;
  - (D) A fill-up line installed above the BOPE;
  - (E) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary; and
  - (F) A blow-down line fitted with two valves installed below the BOPE with blow-down line directed in such a manner as to permit containment of produced fluids and to minimize any safety hazard to personnel.
- (4) CLASS 1A BOPE is required in areas where dry steam is known to exist and/or formation pressures are less than hydrostatic and air is used as the drilling medium. Equipment shall include:
- (A) A rotating-head installed at the top of the BOPE stack;
  - (B) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in any any time;
  - (C) A banjo-box steam diversion unit installed below the double-ram BOPE, fitted with a muffler capable of lowering sound emissions to within acceptable standards;
  - (D) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box so that the well can be shut-in while removing the rotating-head during bit changes;
  - (E) A gate valve required on final casing string to be cemented back to surface, with a minimum working-pressure rating of three hundred psi, installed below the blind-ram so that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack;
  - (F) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system, one at the driller's station

- and the other at least fifty feet away from the well head;
- (G) Kelly cock and standpipe valves;
  - (H) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary; and
  - (I) A blow-down line fitted with two valves installed below the BOPE. This line shall be directed so as to minimize any safety hazard to personnel. If any portion of a well is drilled using mud, Class 2M BOPE shall be installed on the surface casing so that the well can be shut-in at any time.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

§13-183-75 Well completion. A well is considered to be completed thirty days after drilling operations have ceased and the well is capable of producing a geothermal resource, or thirty days after it has commenced to produce a geothermal resource, unless drilling operations are resumed before the end of the thirty-day period. For the purpose of filing well records, the time limit of sixty days begins either when the well commences production or injection, the drilling operations are suspended for more than thirty days, or the well is abandoned. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-76 Well tests. (a) The chairperson shall require the well tests or remedial work as necessary to prevent and minimize damage to life, health, property, natural resources, geothermal resources, ground water resources, and the environment. Tests may include casing tests, cementing tests, directional tests, or equipment tests.

(b) All casing strings shall be pressure tested after cementing and before commencing any other operations on the well. Minimum casing test pressure shall be approximately one-third of the manufacturer's rated internal yield pressure; provided that the test pressure shall not be less than six hundred pounds per square inch and greater than 1500 pounds per square inch. In cases where combination strings are involved, the above test pressures shall apply to the lowest pressure-rated casing used. Test pressures shall be applied for a period of thirty minutes. If a drop of more than ten percent of the test pressure should occur, the casing or cement job shall be considered defective and corrective

measures shall be taken before commencing any further operations on the well.

(c) If the cementing of any casing appears to be defective, or if the casing in any well appears to be defective or corroded or parted, or if there appears to be any underground leakage for whatever other reason which may cause or permit underground waste, the operator shall proceed with diligence to use the appropriate method or methods to eliminate the hazard. If the hazard of waste cannot be eliminated, the well shall be plugged and abandoned in accordance with a plugging program approved by the chairperson.

(d) All wells shall be tested to determine the deviation from the vertical at maximum intervals of five hundred feet or less. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

#### Subchapter 9. Drilling; Modification of Well for Injection Use

§13-183-77 Injection wells. Injection wells are those wells used for disposal of geothermal waste fluids, for the augmentation of geothermal reservoir fluids, for maintenance of reservoir pressures, or for any other purpose authorized by the chairperson. New wells may be drilled or old wells may be modified for injection purposes. [Eff. JUN 22 1981 ]  
(Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-78 Permit required. Prior to modification of existing wells for injection purposes, an appropriate application for permit shall be filed with the chairperson together with filing fee, as required in §13-183-65. Modification work shall not commence until a permit has been issued by the chairperson.  
[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

§13-183-79 Surveillance of injection wells.  
(a) Surveillance of injection wells shall be necessary in order to establish that all injection effluent is confined to the intended zone of injection. When an owner or operator proposes to drill a new well or modify an existing well the owner or operator shall be required to demonstrate to the satisfaction of the chairperson that the casing has complete integrity by approved test methods.

(b) To establish the integrity of the annular cement above the shoe of the casing, the operator shall make sufficient surveys, within thirty days after injection is started into a well, to demonstrate that all the injected fluid is confined to the intended zone of injection. Surveys shall thereafter be made at least

every two years, or as often as the chairperson may order. All the surveys shall be witnessed by the chairperson.

(c) After the injection well has been put into service, the chairperson may visit the well site periodically. At these times, surface conditions shall be noted and if any unsatisfactory conditions exist, the operator shall be notified of needed remedial work. If this required work is not performed within ninety days, the permit issued for the well by the chairperson shall be rescinded. If it is determined that damage is occurring, the chairperson may order that the repair work be done immediately.

(d) Injection pressures shall be recorded and compared with the pressure reported on the appropriate forms. Any discrepancies shall be rectified immediately by the operator. A graph of pressures and rates versus time shall be maintained by the operator. Reasons for anomalies shall be promptly ascertained. If these anomalies demonstrate that damage is being done, the permit issued by the chairperson may be rescinded and injection shall cease.

(e) At the discretion of the chairperson, when an injection well has been left idle for a period of two years or longer, the operator shall be informed by letter that the permit issued for use of the well for injection purposes has been rescinded. In the event the operator intends again to use the well for injection purposes, the operator shall be required to file a new application for permit and demonstrate to the satisfaction of the chairperson by means of surveys that the injected fluids will be confined to the intended zone of injection. [Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §182-14)

#### Subchapter 10. Drilling; Operation and Maintenance

##### §13-183-80 Well operation and maintenance.

(a) All wells and their appurtenances such as well head, separators, pumps, mufflers, scrubbers, manifolds, valves, and pipelines shall be operated and maintained by the operator in good working condition in order to prevent unacceptable pollution, waste and the loss of or damage to life, health, property, natural resources, and environment. The well head and appurtenances of all wells shall meet a test pressure of at least one and a half times the calculated or known pressure of the geothermal reservoir tapped or to be tapped by the well.

(b) Periodic corrosion surveillance of any well and appurtenances may be conducted by the chairperson or authorized representative and any leakage, waste, or hazard shall be promptly corrected by the operator.

(c) The operator of any well shall notify the chairperson of any blowout, break, leak, or spill of any well or appurtenant facilities. The notification to the chairperson shall consist of a written report submitted within ten days after discovery of the incident.

(d) The chairperson shall notify the operator of any well not being operated or maintained in accordance with these rules to take whatever steps may be necessary to remedy the defect at the operator's expense within the period of time specified in the notice. If the operator fails to comply with the notice and remedy the defect within the specified period, the chairperson may do the work as maybe necessary to plug and abandon the well or put it in proper condition at the expense of the operator or the surety and the chairperson may take necessary action to enforce the penalty provided in these rules. [Eff. JUN 22 1981 ] (Auth: HRS §182-14) (Imp: HRS §182-14)

#### Subchapter 11, Drilling; Abandonment of Wells

*Abandonment*

§13-183-81 Notice of intent to abandon; permit; filing fee. The operator of any well proposed to be abandoned shall file with the chairperson an application for permit to abandon, prior to the abandonment. The operator's proposed plans for abandonment shall be subject to approval and revision prior to the issuance of a permit by the chairperson. Each application to abandon a well shall be accompanied by a non-refundable filing fee of \$100. [Eff. JUN 22 1981 ] (Auth: HRS §182-14) (Imp: HRS §182-14)

§13-183-82 General requirements. (a) The operator of any well shall promptly plug and abandon any well that is deserted, not in use, is deemed not to be potentially useful, is wasting geothermal or ground water resources, or is irreparably damaged. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the chairperson.

(b) Before any work is commenced to abandon any well, notice shall be given by the operator to the chairperson, which notice shall show the condition of the well and the proposed method of abandonment. Unless otherwise specified in the plan of operation, no well may be abandoned except as prescribed herein. The operator of a lease shall promptly plug and abandon any well that is deserted or not used or deemed useful by the board. No well capable of producing in commercial quantities may be abandoned until receipt of written approval by the chairperson. Equipment shall be removed and premises at the well site shall be restored as near

as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the chairperson. When drilling operations have been temporarily suspended drilling equipment shall not be removed from any well without taking adequate measures to close the well and protect subsurface resources. Failure of lessee to comply with any requirements under this rule shall authorize the chairperson to cause the work to be performed at the expense of lessee and the surety.

(c) Good quality, heavy drilling fluid approved by the chairperson shall be used to replace any water in the hole and to fill all portions of the hole not plugged with cement.

(d) Subsequent to plugging and abandonment operations in the hole, casing shall be cut off at least six feet below the surface of the ground, all concrete cellars and other structures shall be removed, and the surface location restored, as near as practicable, to original conditions.

(e) A history of the well shall be filed within sixty days after completion of abandonment; provided that in the case of an exploratory well the report shall be filed within six months after abandonment.

(f) Any bond or rider thereto covering the well shall remain in full force and effect until the well is properly abandoned and the surface properly restored. Written approval of the abandonment shall be obtained from the chairperson before any bond is released.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)  
(Imp: HRS §§178-3, 182-14)

§13-183-83 Cementing requirements. (a) Cement used to plug any well, except that cement or concrete used for surface plugging, shall be placed in the hole by pumping through drill pipe or tubing. The cement shall contain a high temperature resistant admix unless this requirement is waived by the chairperson the particular circumstances existing in that well or area. All open annuli shall be filled solid with cement to the surface.

(b) One hundred lineal feet of cement shall be placed straddling the bottom of the conductor pipe and at the shoes of all casings.

(c) Cement shall be placed solidly across geothermal zones and extending one hundred lineal feet above and below the zones, whether in uncased or cased (perforated) hole, except as follows:

(1) One hundred lineal feet of cement shall be placed straddling casing stubs and laps. If unable to enter casing stubs or laps, one hundred lineal feet of cement shall be placed above the top of the stubs or laps.

- (2) If casing is collapsed, etc., cement shall be placed solidly in geothermal zones or perforated sections of casing and extending one hundred lineal feet above the zone or perforated section by squeezing with a retainer or braden head.
- (d) Fifty lineal feet of cement shall be placed above the top of casing liners.
- (e) A surface plug consisting of a minimum of fifty lineal feet of neat cement or ready mix concrete shall be placed below the surface of the well.
- (f) Where a well has been drilled with air, a bridge plug may be placed at the deepest cemented casing shoe and the bridge plug shall be capped with a minimum of two hundred lineal feet of cement.
- [Eff. JUN 22 1981] (Auth: HRS §182-14)  
(Imp: HRS §§178-3, 182-14)

Subchapter 12. Drilling; Records and  
Reports of Wells

§13-183-84 Well records. (a) The operator of any geothermal well shall keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well, including:

- (1) Lithology and depths of formations encountered;
- (2) Cores;
- (3) Water-bearing and geothermal heat-bearing strata and their depths, pressures and temperatures; and
- (4) Other well surveys and logs of temperature, chemical, radioactive, and electrical characteristics of the well.

(b) These records shall be kept within the state in the local office of the operator or his designated agent and together with all other reports of the operator, shall be subject, during business hours, to the inspection of the chairperson. The board may also require the additional data or reports relating to production or utilization of geothermal resources and by-products as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste and the optimum use of geothermal, water and other natural resources of the state. [Eff. JUN 22 1981]  
(Auth: HRS §182-14) (Imp: HRS §§178-3, 182-14)

§13-183-85 Reports to be filed. Within six months after the completion of any well or completion of any deepening, redrilling, plugging, altering, or abandonment work, the operator shall file with the

*Reports to  
be filed with  
DLNR!*



department of land and natural resources in Honolulu, Hawaii, the following well reports on forms provided by the department:

- (1) Drilling log and core report. The drilling log and core report shall show the lithologic characteristics and depths of formations encountered, the depths and temperatures of ground water-bearing and geothermal resources-bearing strata, and the temperatures, chemical compositions, and other chemical and physical characteristics of fluids encountered from time to time, so far as ascertained. The report shall show the depth, lithologic character and fluid content of cores obtained, so far as determined.
- (2) Well history report. The well history report shall describe in detail the chronological order on a daily basis all significant operations carried out and equipment used and shall be submitted upon completion of drilling, testing, completion, recompletion and abandonment of a well.
- (3) Well summary report. The well summary report shall show data pertinent to the condition of a well at the time of completion of work done. Well locations shown on this form shall be surveyed by a licensed surveyor.
- (4) Supplementary notice. Reports on any other operations not specifically mentioned herein which affect the previous reported status of a well shall be reported on the supplementary notice form.
- (5) All reports shall be the property of the state with the right to utilize the same.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §§178-6, 182-14)

§13-183-86 Monthly production and injection reports to be filed. The operator of any well which is producing geothermal resources or by-products or is being used for injection purposes shall file with the chairperson on or before the thirtieth day after the end of each month a report on the amount of geothermal resources produced, sold, and used, and the amount of fluid injected for that month as the case may be.

[Eff. JUN 22 1981 ] (Auth: HRS §182-14)

(Imp: HRS §§178-6, 182-14)

Subchapter 13. Drilling; Environmental  
Protection Requirements

§13-183-87 Environmental protection. (a) Protection of the environment includes responsibility of the operator of any well to:

- (1) Conduct exploration, drilling, and development operations in a manner deemed necessary by the chairperson to provide maximum protection of the environment;
- (2) Rehabilitate disturbed lands;
- (3) Take all precautions deemed necessary by the chairperson to protect the public health and safety; and
- (4) Conduct operations in accordance with the intent and objectives of these rules and all other applicable federal, state, and county environmental legislation.

(b) Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of these rules and of all other applicable federal, state, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards by any well operator after due notification, may be construed as grounds for the chairperson to order a suspension of well operations.

(c) The operator of any well shall be responsible for monitoring readily identifiable localized environmental impacts associated with specific activities that are under the operator's control. Monitoring of environmental impacts may be conducted by the use of aerial surveys, inspections, periodic samplings, continuous records, or by other means or methods as required by the chairperson. Due to the differing natural environmental conditions among geothermal areas, the extent and frequency of monitoring activities shall be approved by the chairperson on an individual well basis. In the event the chairperson determines that the degree and adequacy of existing environmental protection rules in certain areas are insufficient, the chairperson may establish additional and more stringent requirements.

The operator of any well shall provide for acquisition of adequate environmental baseline data prior to submission of a plan for production. Techniques and standards to be used by the operator for meeting these requirements shall be subject to the approval of the chairperson.

(d) The operator of any well shall reduce visual pollution, where feasible, by the careful selection of sites for operations and facilities. The design and

construction of facilities shall be conducted so that the facilities will blend into the natural environmental setting of the area by the appropriate use of landscaping, vegetation, compatible color schemes, and minimum profiles. Native plants or other compatible vegetation shall be used, where possible, for landscaping and revegetation.

(e) Drilling and operating plans shall be designed so that the operations will result in the least disturbance of land, water, and vegetation. Existing roads shall be used where feasible. Entry upon certain environmental fragile land areas may be either seasonally restricted or restricted to special vehicles or transportation methods which will minimize disturbance to the surface or other resources as specified by the chairperson. Plans for drilling operations shall provide for the reclamation and revegetation of all disturbed lands in a manner approved by the chairperson. Land reclamation may include preparation and seeding with prescribed wildlife food and plant cover or improved and acceptable substitutes thereof which will equal or enhance the food values for indigenous wildlife species and domesticated animals. Temporary fencing for the reclaimed areas may be required to facilitate restoration thereof.

(f) Operations shall be conducted in a manner which minimizes erosion and disturbance to natural drainage. The operator of any well shall provide adequate erosion and drainage control to prevent sediments from disturbed sites from entering water courses for soil and natural resource conservation protection.

(g) The operator of any well shall conduct all operations in a manner which provides reasonable protection of fish, wildlife, and natural habitat. The operator shall take measures necessary for the conservation of endangered and threatened species of flora and fauna.

(h) The operator of any well shall exercise due diligence in the conduct of his operations to protect and preserve significant archaeological, historical, cultural, paleontological, and unique geologic sites. Previously unknown sites discovered during any operations shall be immediately reported to the chairperson, and operations on that site shall cease until said site can be assessed for its archaeological value.

(i) The operator of any well shall comply with all applicable federal, state, and local standards with respect to air, land, water, and noise pollution, and the disposal of liquid, solid, and gaseous effluent. Immediate corrective action approved or prescribed by the chairperson shall be taken in all cases where pollution has occurred or abatement is deemed necessary. The disposal of well effluents shall be done in a manner

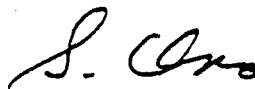
that does not constitute a hazard to surface or ground water resources.

(j) The operator of any well shall design, plan, and conduct all well drilling, casing and cementing operations in a manner which provides for protection of all usable ground water resources from exhaustion, depletion, waste, pollution, and salt water encroachment or the threat thereof. [Eff. JUN 22 1981 ]

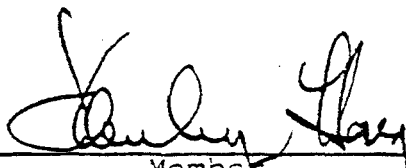
(Auth: HRS §182-14) (Imp: HRS §182-14)

The rules adopting chapter 183 of Title 13, Administrative Rules entitled "Rules on Leasing and Drilling of Geothermal Resources" were adopted on May 8, 1981 by the board of land and natural resources following a public hearing held on April 10, 13, 14 and 15, 1981, after public notice was given in the Honolulu Star Bulletin on March 21, 1981, and the Hawaii Tribune Herald, the Maui News, and the Garden Island on March 27, 1981.

This rule shall take effect ten days after filing with the office of the lieutenant governor.



Chairperson and Member  
Board of Land and  
Natural Resources

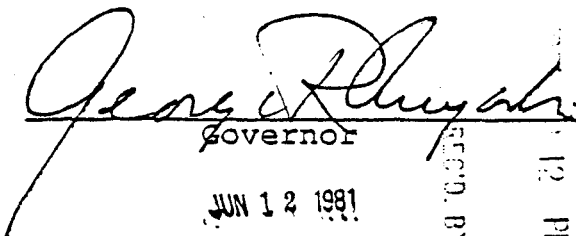


Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General



Governor

JUN 12 1981

Date Filed

RECD. BY

JUN 12 PM 2 21

LAND & NATURAL RESOURCES OFFICE

(To be made one and seven copies,

THE SENATE

.....TWELFTH..... LEGISLATURE, 19 ...84

STATE OF HAWAII

S.B. NO.

2184-84

S.D. 1

H.D. 1

C.D. 1

ACT 151

# A BILL FOR AN ACT

RELATING TO GEOTHERMAL ENERGY.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the rights of lessees holding geothermal mining leases issued by the state or geothermal developers holding exploratory and/or development permits from either the state or county government need to be clarified. The legislature finds that the respective roles of the state and county governments in connection with the control of geothermal development within geothermal resource subzones need to be clarified also. The purpose of this Act is to provide such further clarification.

SECTION 2. Section 205-5.1, Hawaii Revised Statutes, is amended to read as follows:

"[[]\$205-5.1[]] Geothermal resource subzones. (a) Geothermal resource subzones may be designated within [each of] the urban, rural, agricultural and conservation land use districts established under section 205-2. Only those areas

1 designated as geothermal resource subzones may be utilized  
2 for [the exploration, development, production, and  
3 distribution of electrical energy from geothermal sources,]  
4 geothermal development activities in addition to those uses  
5 permitted in each land use district under this chapter.  
6 Geothermal development activities may be permitted within  
7 urban, rural, agricultural, and conservation land use  
8 districts in accordance with this chapter. "Geothermal  
9 development activities" means the exploration, development  
10 or production of electrical energy from geothermal  
11 resources.

12 (b) The board of land and natural resources shall have  
13 the responsibility for designating areas as geothermal  
14 resource subzones as provided under section 205-5.2[.];  
15 except that the total area within an agricultural district  
16 which is the subject of a geothermal mining lease approved  
17 by the board of land and natural resources, any part or all  
18 of which area is the subject of a special use permit issued  
19 by the county for geothermal development activities, on or  
20 before the effective date of this Act is hereby designated  
21 as a geothermal resource subzone for the duration of the  
22 lease. The designation of geothermal resource subzones  
23 shall be governed exclusively by this section and  
24  
25

1 section 205-5.2, except as provided therein. The board  
2 shall adopt, amend, or repeal rules related to its authority  
3 to designate and regulate the use of geothermal resource  
4 subzones in the manner provided under chapter 91.

5 The authority of the board to designate geothermal  
6 resource subzones shall be an exception to those provisions  
7 of this chapter and of section 46-4 authorizing the land use  
8 commission and the counties to establish and modify land use  
9 districts and to regulate uses therein. The provisions of  
10 this section shall not abrogate nor supersede the provisions  
11 of chapters 182 and 183.

12 (c) The use of an area for [the exploration,  
13 geothermal development[, production and/or distribution of  
14 electrical energy from geothermal sources] activities within  
15 a geothermal resource subzone shall be governed by the board  
16 within the conservation district and, except as herein  
17 provided, by [existing] state and county statutes,  
18 ordinances, and rules not inconsistent herewith within [the]  
19 agricultural, rural, and urban districts, except that no  
20 land use commission approval or special use permit  
21 procedures under section 205-6 shall be required for the use  
22 of such subzones. [The board and/or appropriate county  
23 agency shall, upon request, conduct a contested case hearing  
24  
25



S.B. NO.

2184-84  
S.D. 1  
H.D. 1  
C.D. 1

1 pursuant to chapter 91 prior to the issuance of a geothermal  
2 resource permit relating to the exploration, development,  
3 production, and distribution of electrical energy from  
4 geothermal resources. The standard for determining the  
5 weight of the evidence in a contested case proceeding shall  
6 be by a preponderance of evidence.] In the absence of  
7 provisions in the county general plan and zoning ordinances  
8 specifically relating to the use and location of geothermal  
9 development activities in an agricultural, rural, or urban  
10 district, the appropriate county authority may issue a  
11 geothermal resource permit to allow geothermal development  
12 activities. "Appropriate county authority" means the county  
13 planning commission unless some other agency or body is  
14 designated by ordinance of the county council. Such uses as  
15 are permitted by county general plan and zoning ordinances,  
16 by the appropriate county authority, shall be deemed to be  
17 reasonable and to promote the effectiveness and objectives  
18 of this chapter. Chapters 177, 178, 182, 183, 205A, 226,  
19 342, and 343 shall apply as appropriate. If provisions in  
20 the county general plan and zoning ordinances specifically  
21 relate to the use and location of geothermal development  
22 activities in an agricultural, rural, or urban district,  
23 the provisions shall require the appropriate county  
24  
25

1 authority to conduct a public hearing and, upon appropriate  
2 request, a contested case hearing pursuant to chapter 91, on  
3 any application for a geothermal resource permit to  
4 determine whether the use is in conformity with the criteria  
5 specified in section 205-5.1(e) for granting geothermal  
6 resource permits.

7 (d) If geothermal development activities are proposed  
8 within a conservation district, then, after receipt of a  
9 properly filed and completed application, the board of land  
10 and natural resources shall conduct a public hearing and,  
11 upon appropriate request, a contested case hearing pursuant  
12 to chapter 91 to determine whether, pursuant to board  
13 regulations, a conservation district use permit shall be  
14 granted to authorize the geothermal development activities  
15 described in the application.

16 (e) If geothermal development activities are proposed  
17 within agricultural, rural, or urban districts and such  
18 proposed activities are not permitted uses pursuant to  
19 county general plan and zoning ordinances, then after  
20 receipt of a properly filed and completed application, the  
21 appropriate county authority shall conduct a public hearing  
22 and, upon appropriate request, a contested case hearing  
23 pursuant to chapter 91 to determine whether a geothermal  
24 resource permit shall be granted to authorize the geothermal  
25

1 development activities described in the application. The  
2 appropriate county authority shall grant a geothermal  
3 resource permit if it finds that applicant has demonstrated  
4 by a preponderance of the evidence that:

- 5 (1) The desired uses would not have unreasonable  
6 adverse health, environmental, or socio-economic  
7 effects on residents or surrounding property; and  
8 (2) The desired uses would not unreasonably burden  
9 public agencies to provide roads and streets,  
10 sewers, water, drainage, school improvements, and  
11 police and fire protection; and  
12 (3) That there are reasonable measures available to  
13 mitigate the unreasonable adverse effects or  
14 burdens referred to above.

15 Unless there is a mutual agreement to extend, a  
16 decision shall be made on the application by the appropriate  
17 county authority within six months of the date a complete  
18 application was filed; provided that if a contested case  
19 hearing is held, the final permit decision shall be made  
20 within nine months of the date a complete application was  
21 filed."

22 SECTION 3. Notwithstanding the provisions of  
23 section 205-5.2, Hawaii Revised Statutes, regarding  
24  
25

1 county-by-county assessment of areas with geothermal  
2 potential, the board of land and natural resources shall  
3 separately conduct an assessment of the area described on  
4 maps attached to the board of land and natural resources  
5 decision and order, dated February 25, 1983, which was the  
6 subject of a conservation district use permit. The  
7 assessment shall be in accordance with all provisions of  
8 Act 296, Session Laws of Hawaii 1983, regarding the  
9 procedures and standards for designation of an area as a  
10 geothermal resource subzone. The board of land and natural  
11 resources shall make its determination regarding the  
12 designation of all or any portion of the abovementioned  
13 area, as a geothermal resource subzone, on or before  
14 December 31, 1984.

15 SECTION 4. If any provision of this Act or the  
16 application thereof to any person or circumstance is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act which can be given effect without  
19 the invalid provision or application, and to this end the  
20 provisions of this Act are severable.

21 SECTION 5. Statutory material to be repealed is  
22 bracketed. New material is underscored.

23 SECTION 6. This Act shall take effect upon its  
24 approval.

25 Approved by the  
Governor

MAY 25 1984

~~DRAFT~~

4/6/84

*Nea*

*ADOPTED RULES*

*SUBJECT TO AMENDMENTS*

*ARISING FROM ACT 151*

*DEAN*

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 184

Designation and Regulation of  
Geothermal Resource Subzones

Subchapter 1. General

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|-----------|--------------------|
| §13-184-1 | Purpose            |
| §13-184-2 | Definitions        |
| §13-184-3 | Subzone objectives |

Subchapter 2. Designation of Geothermal Resource Subzones

- |            |  |
|------------|--|
| §13-184-4  | Board initiated subzone designations             |
| §13-184-5  | Landowner initiated subzone designations         |
| §13-184-6  | Criteria for designation of subzones             |
| §13-184-7  | Environmental impact statement not required      |
| §13-184-8  | Notice and public hearings                       |
| §13-184-9  | Decision of the board                            |
| §13-184-10 | Modification and withdrawal of existing subzones |

Subchapter 3. Regulation of Geothermal Resource Subzones

- |            |                                  |
|------------|----------------------------------|
| §13-184-11 | Administration of subzones       |
| §13-184-12 | Contested case hearings          |
| §13-184-13 | Effective date and applicability |

Subchapter 1

General

§13-184-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for the designation and regulation of geothermal resource subzones for geothermal resource exploration, discovery, development, production, and distribution for useful purposes within conservation, agricultural, rural, and urban districts. These guidelines and procedures are intended to assist in the location of geothermal resource development in areas having the least environmental impact. [Eff. ] (Auth: HRS §205-14) (Imp: HRS §205-14)

§13-184-2 Definitions. As used in this chapter:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources or a designated representative.

"Department" means the department of land and natural resources.

"Geothermal resource" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from such natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, steam and associated gases, in whatever form, found below the surface of the earth.

"Geothermal resource subzone" means any area designated by the board as provided in this chapter for use of geothermal resource exploration, discovery, development, production, and distribution for useful purposes in addition to those uses permitted in each land district under chapter 205 of the Hawaii Revised Statutes.

"GRS" means geothermal resource subzone.

"Operator" means any person as defined herein engaged in drilling, maintaining, operating, producing or managing any geothermal well and appurtenances, geothermal research facility, and geothermal production or utilization facility including electric power plant. [Eff. ] (Auth: HRS §205-14) (Imp: HRS §205-14)

§13-184-3 Subzone objectives. The establishment and regulation of geothermal resource subzones is intended to facilitate the exploration, development, and use of geothermal resources in those areas of the State where such activities will serve, in overall perspective, the best interest of the State,

premised upon the criteria set forth in section 13-184-12. These major objectives are:

- (1) To allow the utilization of geothermal energy for beneficial purposes, particularly electrical power generation, which would help achieve the State's goal of energy self-sufficiency and broaden the State's economic base through development of a natural resource;
  - (2) To confine geothermal exploration, discovery, development, production and utilization activities to potential or known geothermal areas of the State where such activities would be of greater benefit to the state than the existing or reasonably foreseeable future use of such areas; and
  - (3) To confine geothermal exploration, discovery, development, production and utilization activities to potential or known geothermal areas of the State where they would have the lowest environmental impact.
- [Eff. \_\_\_\_\_] (Auth: HRS §205-\_\_) (Imp: HRS §205-\_\_)

## Subchapter 2

### Designation of Geothermal Resource Subzones

§13-184-4 Board initiated subzone designation. Beginning in 1983, and prior to the designation of any area as a geothermal resource subzone, the board shall first make or cause to be made a county-by-county assessment of those areas within the State which have potential for geothermal exploration, discovery, development or production. The methods to be used for making the assessments shall be left to the discretion of the board, provided that the board shall as a minimum consider the criteria set forth in section 13-184-6. The board may in its discretion base its methods for assessment on currently available public information. Where applicable, the board shall consider the objectives, policies and guidelines set forth in part I of chapter 205A, HRS and the provisions of chapter 226, HRS.

The initial county-by-county assessments of areas with geothermal potential shall be revised or updated by the board at least once every five years beginning in 1988, or at any lesser interval of years at the discretion of the board.

[Eff. \_\_\_\_\_] (Auth: HRS §205-\_\_) (Imp: HRS §205-\_\_)

§13-184-5 Landowner initiated subzone designation. In addition to designations initiated by the board, any property

owner, geothermal mining lessee, or person with an interest in real property may initiate an application for designation of any area with geothermal potential as a geothermal resource subzone by specifying the area to the board. The application shall be accompanied by the following information:

- (1) Names and addresses of the applicant, operator, owner of the geothermal mineral rights, landowner if not the same as the applicant, and the geothermal lease number, if applicable;
- (2) Evidence and certification that the applicant is qualified to submit such a petition.
- (3) An accurate description and map of the area desired to be designated as a geothermal resource subzone;
- (4) A statement by applicant of the purpose, justification, and need for designation; and
- (5) An assessment report based on the criteria set forth in section 13-184-6 and any other information to support the proposed designation.

Applications for geothermal resource subzones shall be submitted to the department for approval by the board. Each application shall be accompanied by a filing fee of \$100.00. The chairperson shall review the application for completeness and may request additional information deemed necessary to process the application for board approval. The chairperson shall notify the applicant in writing of the acceptance of the completed application. Within 180 days of the written notification of acceptance of the application, the board shall hold public hearings and render a decision on designating any part or all of the area requested for designation as a geothermal resource subzone. If the request for geothermal resource subzone is denied, the board shall state its reason for its decision. If the board fails to hold a hearing and render a decision within 180 days after issuance of the notice of acceptance of the application, the application is deemed approved subject to the conditions of section 13-184-11. [Eff. ] (Auth: HRS §205-\_\_ ) (Imp: HRS §205-\_\_ )

§13-184-6 Criteria for designation of subzones. The board, in designating an area as a geothermal resource subzone, shall be guided in its decision by the policy to locate geothermal resource development areas having the lowest potential environmental impact and the following criteria.

- (1) That the area has known or plausible potential for the exploration, discovery, or production of geothermal resource;
- (2) That there is a known or likely prospect for the utilization of geothermal resources for direct use within the area proposed for designation or for indirect use to produce and distribute electrical energy from a



power plant located within the area proposed for designation;

- (3) That potential or existing geologic hazards to any geothermal use or facility in the proposed area do not exist or can be reasonably alleviated by appropriate location and geologic engineering design of geothermal wells and related facilities;
- (4) That social and environmental impacts of the development of geothermal resources within the proposed area would be minimal;
- (5) That the development of geothermal resources within the proposed area must be compatible with existing uses of the surrounding land and permitted uses under the general plan or land use policies of the county in which the area is located;
- (6) That the potential economic benefits to be derived from geothermal development in the proposed area would be in the best interest of the county or counties involved and the State as a whole; and
- (7) That geothermal and related use of the area proposed for designation would be of greater benefit to the State than the existing or reasonably foreseeable future use of the land. [Eff. \_\_\_\_\_] (Auth: HRS §205-\_\_\_\_) (Imp: HRS §205-\_\_\_\_)

§13-184-7 Environmental impact statement not required.

An environmental impact statement as defined under chapter 343, Hawaii Revised Statutes, shall not be required in assessing any area proposed for designation as a geothermal resource subzone. [Eff. \_\_\_\_\_] (Auth: HRS §205-\_\_\_\_) (Imp: HRS §205-\_\_\_\_)

§13-184-8 Notice and public hearings. When the board or a landowner proposes an area for designation as a geothermal resource subzone, the board shall hold a public hearing in reasonably close proximity to the proposed area and publish a notice of the public hearing setting forth:

- (1) A description of the proposed area;
- (2) An invitation for public comment; and
- (3) The date, time, and place of the public hearing where written or oral testimony may be submitted or heard.

Such notice shall be published on three separate days in a newspaper of general circulation statewide and in the county in which the public hearing is to be held. The first publication shall be not less than twenty nor more than thirty days before the date set for the hearing. Copies of the notice shall be mailed to the state department of planning and economic development and the planning commission and planning department of the county in which the proposed area is located.

Publication of the notice of public hearing shall be considered sufficient notice to all landowners and persons who might be affected by the proposed designation.

The public hearing shall be held before the board and the conduct of the public hearing shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments whether orally or in writing. The department of planning and economic development and the affected county planning department shall be permitted to appear at the public hearing and make recommendations concerning the proposal to designate an area. [Eff. ] (Auth: HRS §205-\_\_)  
(Imp: HRS §205-\_\_)

§13-184-9 Decision of the board. At the close of the public hearing, the board shall consider all the testimony and after deliberation make a decision to designate any portion, all or none of the proposed area or announce the date on which it will render its decision. The board may designate a proposed area as a geothermal resource subzone only if it finds the proposed area possesses an acceptable balance of the criteria set forth in section 13-184-6. If the board designates an area as a geothermal resource subzone it shall cause a notice of its decision to be published in a newspaper of general circulation statewide and in a newspaper of general circulation in the county in which the area is located and when so published its decision shall be final unless judicially appealed in the appropriate circuit court. Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area. [Eff. ] (Auth: HRS §205-\_\_)  
(Imp: HRS §205-\_\_)

§13-184-10 Modification and withdrawal of existing subzones. Modification of the boundaries or the withdrawal of an existing designated geothermal resource subzone by the board may be initiated by the board or by application of the landowner or person having a geothermal mining lease or other interest in the land. The procedure for modifying the boundaries or withdrawal of an existing designated geothermal resource subzone shall be conducted pursuant to the provisions of chapter 91, HRS; provided, however, that within an existing subzone with active geothermal exploration, development, production or use, the area may not be modified or withdrawn. An environmental impact statement as defined under chapter 343, HRS, shall not be required in assessing any modification of the boundaries or withdrawal of subzones.  
[Eff. ] (Auth: HRS §205-\_\_)  
(Imp: HRS §205-\_\_)

Subchapter 3

Regulation of Geothermal Resource Subzones

§13-184-11 Administration of subzones. Geothermal resource subzones designated by the board in any of the four land use districts; conservation, agricultural, rural, and urban shall be administered as follows:

- (1) The board shall regulate the use of lands designated as geothermal resource subzones for geothermal resource activities that lie within conservation districts in accordance with chapter 205, Hawaii Revised Statutes and chapter 13-2, Administrative Rules of the department of land and natural resources.
- (2) The appropriate agency of the respective counties shall regulate the use of lands designated in geothermal resource subzones for geothermal resource activities that lie within urban, agricultural or rural districts in accordance with existing state and county statutes, ordinances and rules.

§13-184-12 Contested case hearings. All permits for the use of lands designated as geothermal resource subzones shall be processed in accordance with chapter 91, Hawaii Revised Statutes. A contested case hearing shall be conducted by the board or the appropriate county agency pursuant to chapter 91 of the Hawaii Revised Statutes. [Eff. ]  
(Auth: HRS §205-\_\_) (Imp: HRS §205-\_\_)

§13-184-13 Effective date and applicability. This chapter shall not apply to any active exploration, development or production of electrical energy from geothermal sources taking place on June 14, 1983, the effective date of Act 296, SLH 1983; provided further that any expansion of activities shall be carried out in compliance with the provisions of this chapter. Active exploration, development or production of electrical energy from geothermal sources on the effective date of Act 296, SLH 1983 includes those activities relating to exploration, development or production of electrical energy from geothermal sources permitted and approved on or before June 14, 1983. [Eff. ]  
(Auth: HRS §205-\_\_) (Imp: HRS §205-\_\_)

Chapter 175

IRRIGATION WATER SERVICE,  
MOLOKAI IRRIGATION SYSTEM

Rules Repealing the Department of Land and Natural Resources, Division of Water and Land Development Regulation 1, and Adopting Chapter 175 of Title 13, Administrative Rules.

May 8, 1981

SUMMARY

1. Regulation 1 of the Division of Water and Land Development, Department of Land and Natural Resources entitled, "Rules and Regulations Governing Irrigation Water Service to Consumers of the Molokai Irrigation System" is repealed.

2. Chapter 175 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Molokai Irrigation System" implementing chapter 175, HRS, is adopted.

Regulation 1. "Rules Governing Irrigation Water  
Service to Consumers of the Molokai Irrigation System".  
Division of Water and Land Development. REPEALED  
[ JUN 22 1981 ].

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

CHAPTER 175

RULES GOVERNING IRRIGATION WATER SERVICE  
TO CONSUMERS OF THE MOLOKAI IRRIGATION SYSTEM

§13-175-1	General
§13-175-2	Definitions
§13-175-3	General conditions
§13-175-4	Conservation measures and inter- ruption of water supply
§13-175-5	Elevation agreement, pressure condition
§13-175-6	Application for water service and connections
§13-175-7	New service connections
§13-175-8	Meter reading and rendering of bill
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§13-175-10	Non-registering meters
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§13-175-12	Discontinuance of service
§13-175-13	Restoration of water service
§13-175-14	Board's equipment on consumer's premises
§13-175-15	Damage and accessibility to board's property
§13-175-16	Ingress to and egress from con- sumer's premises
§13-175-17	Responsibility for water receiving equipment
§13-175-18	Consumer's pumping installations
§13-175-19	Cross-connections
§13-175-20	Re-Sale of Water
§13-175-21	Subrogation

Historical Note: Chapter 175 of Title 13, Administra-  
tive Rules, is based substantially on Regulation 1,  
entitled, "Rules and Regulations Governing Irrigation  
Water Service to Consumers of the Molokai Irrigation  
System". [Eff. 9/4/70; R JUN 22 1981 ]

§13-175-1 General. (a) These rules establish the practices governing service of irrigation water from the Molokai irrigation system and define the obligations of the board to consumers and of the consumers to the board.

(b) It is the policy of the board to render adequate and satisfactory service to all consumers and to encourage courtesy to the public by all its employees. The board desires to cooperate with consumers to eliminate water waste and to minimize charges to the consumer.

(c) Prospective consumers are advised to obtain information from the department of the availability of water, pressure conditions, and other pertinent data. [Eff. JUN 22 1984] (Auth: HRS §175-8)  
(Imp: HRS §§175-2, 175-8)

§13-175-2 Definitions. As used herein unless otherwise provided:

"Acreage assessments" means the charge levied by the board based upon the consumer's cultivated lands on an acreage basis.

"Board" means the board of land and natural resources of the State of Hawaii which is the governing body of the department of land and natural resources.

"Consumer" means the person, firm, corporation, partnership, association or public or private organization of any character, whether owner or lessee, whose name appears on the records of the department of land and natural resources as responsible and liable for receiving irrigation water service from the board.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection to his service areas.

"Department" means the department of land and natural resources.

"Irrigation district manager" means the person holding the office of irrigation district manager of the Molokai irrigation system of the department acting directly or through his authorized assistants.

"Main" or "main pipe" means the supply or distribution pipe to which service connections are made.

"Manager-chief engineer" means the person holding the office of manager-chief engineer of the division of water and land development of the department acting directly or through his authorized assistants including the irrigation district manager.

"Molokai" means the island of Molokai, State of Hawaii.

"Molokai irrigation system" means the streams, ditches, flumes, weirs, siphons, reservoirs, tunnels, pipelines, valves, pumps and controls, and other elements comprising the irrigation system operated by the board to serve the land situated on the island of



Molokai, Hawaii.

"Service connection" means the main tap, pipe, fittings and valves from the mains to and including the meter.

"State" means the State of Hawaii.

"Water charges" means the sum of the water tolls and acreage assessments.

"Water tolls" means the charges established by the board for irrigation water supplied by it to consumers. [Eff. JUN 22 1981] (Auth: HRS §175-8) (Imp: HRS §175-8)

§13-175-3 General conditions. (a) Upon proper application a prospective consumer whose premises are within the service limits established by the board for the Molokai irrigation system and whose premises are adjacent to the distribution main, where pressure conditions permit, may obtain irrigation water service; provided, that there is a sufficient water supply developed to take on new or additional service without detriment to those already served, and the consumer agrees to abide by these rules.

(b) The water supplied by the Molokai irrigation system is intended to be used only for production of crops. Water may not be used for any other purpose except with the express written consent of the board. In this connection, the board makes no guaranty, warranty or representation, expressed or implied, as to the quality, condition or fitness of the water supplied for any use or purpose.

(c) When an extension of main is necessary or where large quantities of water are required or a substantial investment is necessary to provide service, the consumer shall be informed by the department as to the conditions and charges to be made for that particular area and situation in question before water service may be approved. Before water service commences, the consumer and the board shall execute an agreement which will include the specific conditions and charges to be made for that particular area. The board shall have the right to refuse service to a consumer if an agreement cannot be executed.

(d) All water supplied by the department will be measured by means of suitable meters. The water tolls shall be in accordance with the rates established by the board. The department shall determine the location and size of all meters and service connections to this system. All service connections shall become the property of the department for operation and maintenance after installation and new connections or disconnections may be made thereto by the board at any time.

(e) The total cultivated area of the consumer shall be levied an acreage assessment in addition to

the water tolls. The department shall determine the area of each consumer's land subject to this assessment. The unit of area measured shall be the acre and fractional acres shall be considered to be a full acre. Once an area is levied the acreage assessment, it may not thereafter be withdrawn from this assessment; provided, however, that should the consumer lose the right to cultivate a portion of their acreage, said acreage may be withdrawn from the acreage assessment.

(f) In order to assure the maximum and most efficient use of the irrigation water available, no one who owns or occupies less than three acres of agricultural land on Molokai suitable for irrigation will be permitted to become a consumer.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)  
(Imp: HRS §175-2)

§13-175-4 Conservation measures and interruption of water supply. (a) The department shall exercise reasonable diligence and care to deliver an adequate supply of water to the consumer and to avoid shortage or interruptions in water service, whenever possible, but shall not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

(b) Whenever in the board's opinion special conservation measures are deemed necessary in order to forestall water shortage and a consequent emergency, the board may restrict or ration the use of water by any reasonable method of control.

(c) The department reserves the right at any and all times to shut off water from the mains with reasonable notice for the purpose of making repairs, extensions, alterations, or for other reasons. Consumers who require a continuous supply of water shall provide, at their own cost, emergency water storage and any check valves or other devices necessary for the protection of equipment or fixtures against failure of the pressure or supply of water in the department's main. Repairs or improvements shall be prosecuted as rapidly as practicable and at the time or times as will cause the least inconvenience to the consumer.

(d) The department will deliver water to the land of each consumer at the level and at the outlet as the department may establish upon their land convenient with the operation of the department's irrigation system, and it shall be the responsibility of each consumer to provide for the distribution of the water upon their land by their own method.

(e) Shortage of irrigation water supply for the Molokai irrigation system during seasonal drought periods may occur. During these periods, the depart-

ment shall supply only the amounts of irrigation water and at the times as in the best judgment of the department will assure all consumers of receiving a fair share of the irrigation water available.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-5 Elevation agreement, pressure condition. (a) The department shall make every effort to maintain pressure but shall not accept responsibility for maintaining pressure in its water main.

(b) Where property is situated at an elevation that it cannot be assured of dependable supply or of adequate service from the distribution system, the consumer, in consideration of connection with the department's system, shall agree to accept the water service as the department is able to render from its existing facilities and to install, if necessary, and maintain at their own expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water. When required, the consumer shall install protective devices between the consumer's supply line and the service connection. The consumer shall execute a written release to the department for all claims on account of any inadequacy of the department's system or inadequacy of the water supply to the consumer.

(c) When the pressure from the department's supply is higher than that for which the irrigation equipment or other facilities are designed, the consumer shall protect the equipment or other facilities by installing and maintaining pressure reducing and relief valves. The board shall not be liable for damage due to pressure conditions or caused by or arising from the failure or defective condition of the pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of the equipment. [Eff. JUN 22 1981 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-6 Application for water service and service connections. (a) Each prospective customer shall be required to sign the standard application form for the water service desired. Assuming responsibility for the payment of future water charges at the designated locations before water is turned on for any use whatever, the consumer signing the application form shall be held liable for the payment of all water charges at the designated location. The user of the land shall also be liable for the water charges.

(b) Water charges shall begin when the water service is established and shall continue until due notification from the consumer or until discontinued by the board for failure of the consumer to comply

with these rules.

(c) When an application for water service is made by a consumer who was responsible for and failed to pay all water bills previously rendered, regardless of location or time incurred, the department may refuse to furnish water service to that application until the outstanding bills are paid.

(d) A consumer taking possession of a property and using water without having made application to the department for water service to the property, shall be held liable for the water charges from the date of the last recorded meter reading. If proper application for water service is made and if accumulated bills for water service are not paid upon presentation, the water service shall be subject to discontinuance without further notice.

(e) Consumers are required to notify the irrigation district manager at least forty-eight hours in advance of the time delivery is desired and to accept the amount of irrigation water and the time delivery is made by the department consistent with its responsibility set forth in these rules. Consumers may be required to receive water on a definite schedule established by the manager-chief engineer.

[Eff. JUN 22 1981] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-7 New service connections. (a) When the application for a service connection has been approved, the connection shall be installed by the department at the expense of the applicant and thereafter shall be maintained by the department at its expense. There shall be one meter for each service connection unless the department, because of operating necessity, installs two or more meters in parallel. All meters will be sealed by the department before installation and no seal shall be altered or broken except by one of the department's authorized employees.

(b) A deposit equal to the board's estimate of the cost of the service connection shall be required of the applicant before the connection is installed. If the actual cost of the connection is in excess of the deposit, the applicant shall pay for the difference. If the actual cost is less than the deposit, its applicant shall be refunded the difference.

(c) The consumer shall install and connect, at its own expense, the supply pipe to the shut-off valve or outlet installed by the department. The consumer's supply line shall at all times remain the sole property of the consumer who shall be responsible for its maintenance and repair. If the consumer's supply pipe is installed before the service connection is set, the department shall make the connection to it; provided, however, it is requested by the consumer

prior to installation.

(d) Only employees of the department shall be allowed to connect or disconnect the service connection to or from the department's main.

(e) Employees of the department are strictly forbidden to demand or accept personal compensation for services rendered.

(f) No service connection or water main shall be installed by the department in any private land until the department is given proper easements for the main or service connection and vehicular access is available.

(g) All meters shall be installed within the public right-of-way or easements, preferably on the boundary line most nearly perpendicular to the main, unless the board, because of operating necessity, provides otherwise. The valve before the meter is installed for the use of employees of the department.

(h) When the proper size of the service connection for any consumer has been determined and the installation has been made, the department has fulfilled its obligations for providing the size of the service connection and the location thereof. If thereafter the consumer desires a change in size of the service connection or a change in the location, the consumer shall bear all costs of the change.

(i) All work and materials involved with the change in location or elevation of any part of the existing irrigation system made necessary by the new service connection shall be at the expense of the applicant.

(j) The department shall determine the location and size of all meters and service connections for this system. [Eff. JUN 22 1981 ] (Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-8 Meter reading and rendering of bill.

(a) Meters are read and bills are rendered monthly. Special readings will be made when necessary for closing of accounts or otherwise required.

(b) Closing bills for short periods of time will ordinarily be determined by the amount of water actually used as indicated by the meter reading, plus the acreage assessment for the full month.

(c) For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately and the readings thereof shall not be combined except in cases where the department, because of operating necessity, installs two or more meters in parallel to serve the same consumer supply pipe.

(d) All notices and bills for water charges shall be mailed by the department to the consumer at the address of the consumer stated in the consumer's application until the department is notified in

writing by the consumer of a new address.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

*delinquent  
payments*

§13-175-9 Payment of bills. All bills shall be due and payable upon deposit in the United States mail, or upon presentation to the consumer. Payment shall be made at the office of the irrigation district manager or, at the department's option, to duly authorized collectors of the department. If any bill is not paid within thirty days after presentation or deposit in the United States mail, the water service shall be subject to discontinuance without further notice. [Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-10 Non-registering meters. If a meter fails to register due to any cause except the non-use of water, an average bill may be rendered. This average bill shall be subject to equitable adjustment, taking into account all factors before, during, and after the period of said bill.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-11 Meter tests and adjustment of bills for inaccuracy of measurement. (a) All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving their premises may request a test of the meter. The requesting consumer will be notified the time of the test and may witness the test. No charge shall be made for meter tests.

(b) If as a result of the test the meter is found to register more than two percent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption for a period not to exceed six months, unless it can be proved that the error was due to some cause the date of which can be fixed. Any overcharge shall be computed back to, but not beyond, said date.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-12 Discontinuance of service. Water service may be discontinued for the following reasons:

- (1) Water service may be discontinued if the bill has not been paid within thirty days after the mailing or presentation thereof to the consumer.
- (2) If the consumer fails to comply with any of these rules, the department shall have the right to discontinue the service.
- (3) Each consumer about to vacate any

premises supplied with water by the department shall give written notice of their intention to vacate prior thereto, specifying the date service is desired to be discontinued. Otherwise the consumer shall be held responsible for all water service furnished to the premises until the department has received the notice of discontinuance. A consumer may not vacate only a portion of their service area.

- (4) The department shall refuse or discontinue water service to any premises if necessary, without giving notice, to protect itself against fraud, abuse, or unauthorized use of water.
- (5) Where negligent or wasteful use of water exists on any premises, the department may discontinue the service if the conditions are not corrected within five days after giving the consumer written notice of intent to do so.
- (6) The department may refuse to furnish water and may discontinue the service to any premises where the demands of the consumer will result in inadequate service to others. [Eff. JUN 22 1981 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-13 Restoration of water service. If water service is turned off because of failure to pay a bill or violation of any of these rules or for other reasons, all outstanding accounts against the consumer shall be paid or satisfactorily secured before water service will be restored. [Eff. JUN 22 1981 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-14 Board's equipment on consumer's premises. All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or other purpose, shall continue to be the property of the department and may be repaired, replaced or removed by the department at any time without the consent of the consumer. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the same. [Eff. JUN 22 1981 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-15 Damage and accessibility to board's property. (a) Any damage to water mains, service connections, valves, standpipes, or other property of the department shall be paid for by the person or

organization responsible for the damage.

(b) The consumer shall be liable for any damage to a meter or other equipment or property of the department caused by the consumer or their tenants, agents, employees, contractors, licensees, or permittees on the consumer's premises, and the department shall be promptly reimbursed by the consumer for all damages upon demand. In the event settlement for the damage is not promptly made, the department reserves the right to discontinue water service to the premises.

(c) No obstructions shall be placed upon or around any water meter, valve, or standpipe rendering it inaccessible.

(d) No animals, livestock, or fowl shall be tethered or tied to any pipe, flume, structure, valve, standpipe, meter, or hydrant of the irrigation system, or permitted to graze or to wander under any structure, or be put or permitted to go into, over or upon, nor shall any dirt, trash, cuttings, rubbish, weed, or debris of any nature be thrown, dumped, or put into or upon any ditch, ditch bank, flume, reservoir, tunnel, or other element of the irrigation system.

(e) No grass, bushes, trees or other windbreak or planting shall be grown or be permitted to grow upon the banks of any ditch or so close thereto as to hang into or over any ditch, reservoir, flume, tunnel, standpipe, valve, meter or hydrant, or other element of the irrigation system, or to inhibit the free passage of water therein. [Eff. JUN 22 1931 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-16 Ingress to and egress from consumer's premises. Any officer or employee of the department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours for any purpose reasonably connected with the furnishing of water or other service to the premises, and the exercise of any and all rights secured to it by law or these rules. In case any officer or employee is refused admittance to the premises or after being admitted is hindered or prevented from making the inspection, the board may cause the water to be turned off from the premises after giving twenty-four hours' notice to the owner or occupant of the premises of its intention to do so. [Eff. JUN 22 1931 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-17 Responsibility for water receiving equipment. (a) The consumer shall, at its own risk and expense, furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying, and utilizing water and the board shall not be responsible for any loss or damage caused by the improper installation of the



equipment or the negligence, want of proper care, or wrongful act of the consumer, or of any of their tenants, agents, employees, contractors, licensees, or permittees in installing, maintaining, using, operating, or interfering with any equipment.

(b) The department shall not be responsible for damage to property caused by irrigation equipment, spigots, faucets, valves, and other equipment that may be opened when water is turned on at the meter, either when turned on originally or where turned on after a temporary shutdown.

(c) All the consumers' valves shall be slow-closing to prevent water hammer. [Eff. JUN 22 1981 ]  
(Auth: HRS §175-8) (Imp: HRS §175-2)

§13-175-18 Consumer's pumping installation.

(a) Consumers shall not be permitted to install or operate pumps, to pump water directly from the main to the consumer's system except in cases approved in writing. No approval shall be given in cases where, in the opinion of the department, the installation and operation thereof may adversely affect the water service extended by the department to other consumers.

(b) Approvals given by the department under this section are subject to revocation upon ninety days' notice. During the period, a consumer desiring to continue operation of the pump, shall eliminate the objectionable features causing said notification.

(c) No pump shall be equipped with a direct water supply connection for priming purposes except with written permission from the board.

[Eff. JUN 22 1981 ] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-19 Cross-connections. (a) No cross-connections shall be made without the written consent of the department.

(b) The department requires the installation of a mechanical or any other method or device on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or separate storage facility, or in any way increases the pressure of the water within the premises above the pressure furnished by the department, or has the equipment, devices or arrangement of piping, storage or industrial methods or processes that might, under certain circumstances, raise the pressure of the water within the premises above the pressure of the water in the mains of the board. Plans for the installations shall be approved by the board.

(c) As a protection to the consumer's water system, a suitable pressure relief valve shall be installed and maintained at their expense when backflow devices are installed on the consumer's side of the

meter.

(d) Any device installed for the prevention of backflow as may be required under these rules shall, unless the department approves otherwise in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible and with adequate working room for inspections, testing, and repairing.

(e) All devices shall be tested at least once every four months and inspected internally not less than once annually. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the consumer. Tests and annual inspection shall be the responsibility of the consumer and shall be made in accordance with methods acceptable to the department. Records of tests and inspections shall be made on forms prescribed by and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in the department's making the tests, needed repairs and replacements, and charging the cost thereof to the consumer.

(f) Upon request by the department, the consumer shall present an affidavit either certifying to the fact that there are no connections or installations of the type prohibited under this rule on the premises or describing in detail all non-conforming connections or installations.

(g) The several conditions relative to the installation and maintenance of connections referred to in this section shall be subject to change to meet changing requirements of the state and county laws, ordinances, and rules.

(h) Failure on the part of the consumer to comply with the department's requirements relative to cross-connection and backflow protection shall be sufficient reason for discontinuing water service until the time the requirements have been met.

[Eff. JUN 22 1981] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-127-20 Re-sale of water. Unless specifically agreed upon, the consumer shall not re-sell any water received from the board.

[Eff. JUN 22 1981] (Auth: HRS §175-8)

(Imp: HRS §175-2)

§13-175-21 Subrogation. These rules are subject to the provisions of the contract dated June 3, 1963 between the State of Hawaii and the United States of America under which federal funds were made available for the construction of the Molokai irrigation system. [Eff. JUN 22 1981] (Auth: HRS §175-8)

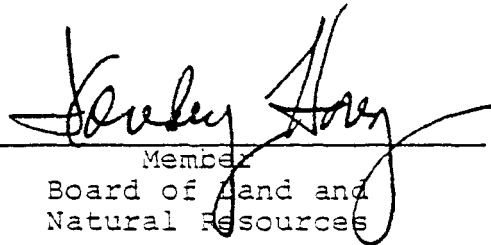
(Imp: HRS §175-5)

The rules adopting chapter 175 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Molokai Irrigation System" were adopted on May 8, 1981 by the board of land and natural resources following a public hearing held on April 10, 13, 14, and 15, 1981, after public notice was given in The Honolulu Star Bulletin on March 21, 1981, and the Hawaii Tribune Herald, the Maui News, and the Garden Island on March 27, 1981.

This rule shall take effect ten days after filing with the office of the lieutenant governor.

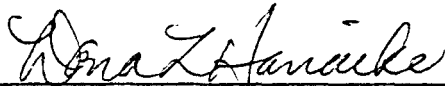


Chairperson and Member  
Board of Land and  
Natural Resources



Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General



Governor

JUN 12 1981

Date Filed

REC'D BY

JUN 12 PM 2 24

CLERK OF THE OFFICE

Chapter 176

IRRIGATION WATER SERVICE,  
WAIMEA IRRIGATION SYSTEM

Rules Repealing the Department of Land and Natural Resources, Division of Water and Land Development Regulation 2, and Adopting Chapter 176 of Title 13, Administrative Rules.

May 8, 1981

SUMMARY

1. Regulation 2 of the Division of Water and Land Development, Department of Land and Natural Resources entitled, "Rules and Regulations Governing Irrigation Water Service to Consumers of the Lalamilo Irrigation System" is repealed.
2. Chapter 176 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Waimea Irrigation System" implementing chapter 174, HRS, is adopted.

Regulation 2. "Rules Governing Irrigation Water  
Service to Consumers of the Lalamilo Irrigation  
System". Division of Water and Land Development.  
REPEALED [ JUN 22 1981 ].

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

CHAPTER 176

RULES GOVERNING IRRIGATION WATER SERVICE  
TO CONSUMERS OF THE WAIMEA IRRIGATION SYSTEM

§13-176-1	General
§13-176-2	Definitions
§13-176-3	General conditions
§13-176-4	Conservation measures and inter- ruption of water supply
§13-176-5	Elevation agreement, pressure condition
§13-176-6	Application for water service and connections
§13-176-7	New service connections
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§13-176-12	Discontinuance of service
§13-176-13	Restoration of water service
§13-176-14	Board's equipment on consumer's premises
§13-176-15	Damage and accessibility to board's property
§13-176-16	Ingress to and egress from consumer's premises
§13-176-17	Responsibility for water receiving equipment
§13-176-18	Consumer's pumping installations
§13-176-19	Cross-connections
§13-176-20	Re-sale of water

Historical Note: Chapter 176 of Title 13, Administrative Rules, is based substantially on Regulation 2, entitled, "Rules and Regulations Governing Irrigation Water Service to Consumers of the Lalamilo Irrigation System". [Eff. 12/11/70; R JUN 22 1981 1]

§13-176-1 General. (a) These rules establish the practices governing service of irrigation water from the Waimea irrigation system and define the obligations of the board to consumers and of the consumers to the board.

(b) It is the policy of the board to render adequate and satisfactory service to all consumers and to encourage courtesy to the public by all its employees. The board desires to cooperate with consumers to eliminate water waste and to minimize charges to the consumer.

(c) Prospective consumers are advised to obtain information from the department of the availability of water, pressure conditions, and other pertinent data. [Eff. JUN 22 1984] (Auth: HRS §174-5)  
(Imp: HRS §174-5)

§13-176-2 Definitions. As used herein unless otherwise provided:

"Acreage assessments" means the charge levied by the board based upon the consumer's cultivated lands on an acreage basis.

"Board" means the board of land and natural resources of the State of Hawaii which is the governing body of the department of land and natural resources.

"Consumer" means the person, firm, corporation, partnership, association or public or private organization of any character, whether owner or tenant, whose name appears on the records of the department of land and natural resources as responsible and liable for receiving irrigation water service from the board.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection to his service areas.

"Cost of service connection" means the sum of the cost of the labor, materials, transportation, equipment and road repair, if any, and other incidental charges necessary for the complete installation of a service connection but excluding the cost of the meter.

"Department" means the department of land and natural resources.

"Irrigation district manager" means the person holding the office of irrigation district manager of the Waimea irrigation system of the department acting directly or through his authorized assistants.

"Main" or "main pipe" means the supply or distribution pipe to which service connections are made.

"Manager-chief engineer" means the person holding the office of manager-chief engineer of the division of water and land development of the department acting directly or through his authorized assistants including the irrigation district manager.



"Service connection" means the main tap, pipe, fittings and valves from the mains to and including the meter.

"State" means the State of Hawaii.

"Waimea irrigation system" means the streams, ditches, flumes, weirs, siphons, reservoirs, tunnels, pipelines, valves, pumps and controls, and other elements comprising the irrigation system operated by the board to serve the lands situated at Waimea, South Kohala, on the island of Hawaii.

"Water charges" means the sum of the water tolls and acreage assessments.

"Water tolls" means the charges established by the board for irrigation water supplied by it to consumers. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §174-5)

§13-176-3 General conditions. (a) Upon proper application a prospective consumer whose premises are within the service limits established by the board for the Waimea irrigation system and whose premises are adjacent to the distribution main, where pressure conditions permit, may obtain irrigation water service; provided, that there is a sufficient water supply developed to take on new or additional service without detriment to those already served, and the consumer agrees to abide by these rules.

(b) The water supplied by the Waimea irrigation system is intended to be used only for production of crops. Water may not be used for any other purpose except with the express written consent of the board. In this connection, the board makes no guaranty, warranty or representation, expressed or implied, as to the quality, condition or fitness of the water supplied for any use or purpose.

(c) When an extension of main is necessary or where large quantities of water are required or a substantial investment is necessary to provide service, the consumer shall be informed by the department as to the conditions and charges to be made for that particular area and situation in question before water service may be approved. Before water service commences, the consumer and the board shall execute an agreement which will include the specific conditions and charges to be made for that particular area. The board shall have the right to refuse service to a consumer if an agreement cannot be executed.

(d) All water supplied by the department will be measured by means of suitable meters. The water tolls shall be in accordance with the rates established by the board. The department shall determine the location and size of all meters and service connections to this system. All service connections shall become the property of the department for operation and

maintenance after installation and new connections or disconnections may be made thereto by the board at any time.

(e) The total cultivated area of the consumer shall be levied an acreage assessment in addition to the water tolls. The department shall determine the area of each consumer's land subject to this assessment. The unit of area measured shall be the acre and fractional acres shall be considered to be a full acre. Once an area is levied the acreage assessment, it may not thereafter be withdrawn from this assessment; provided, however, that should the consumer lose the right to cultivate a portion of their acreage, said acreage may be withdrawn from the acreage assessment.

(f) In order to assure the maximum and most efficient use of the irrigation water available, no one who owns or occupies less than three acres of agricultural land at Waimea suitable for irrigation will be permitted to become a consumer.

[Eff. JUN 22 1981] (Auth: HRS §174-5)

(Imp: HRS §§174-6, 174-12)

§13-176-4 Conservation measures and interruption of water supply. (a) The department shall exercise reasonable diligence and care to deliver an adequate supply of water to the consumer and to avoid shortage or interruptions in water service, whenever possible, but shall not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

(b) Whenever in the board's opinion special conservation measures are deemed necessary in order to forestall water shortage and a consequent emergency, the board may restrict or ration the use of water by any reasonable method of control.

(c) The department reserves the right at any and all times to shut off water from the mains with reasonable notice for the purpose of making repairs, extensions, alterations, or for other reasons. Consumers who require a continuous supply of water shall provide, at their own cost, emergency water storage and any check valves or other devices necessary for the protection of equipment or fixtures against failure of the pressure or supply of water in the department's main. Repairs or improvements shall be prosecuted as rapidly as practicable and at the time or times as will cause the least inconvenience to the consumer.

(d) The department will deliver water to the land of each consumer at the level and at the outlet as the department may establish upon their land convenient with the operation of the department's irrigation system, and it shall be the responsibility of

each consumer to provide for the distribution of the water upon their land by their own method.

(e) Shortage of irrigation water supply for the Waimea irrigation system during seasonal drought periods may occur. During these periods, the department shall supply only the amounts of irrigation water and at the times as in the best judgment of the department will assure all consumers of receiving a fair share of the irrigation water available.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-5, 174-6, 174-19)

§13-176-5 Elevation agreement, pressure condition. (a) The department shall make every effort to maintain pressure but shall not accept responsibility for maintaining pressure in its water main.

(b) Where property is situated at an elevation that it cannot be assured of dependable supply or of adequate service from the distribution system, the consumer, in consideration of connection with the department's system, shall agree to accept the water service as the department is able to render from its existing facilities and to install, if necessary, and maintain at their own expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water. When required, the consumer shall install protective devices between the consumer's supply line and the service connection. The consumer shall execute a written release to the department for all claims on account of any inadequacy of the department's system or inadequacy of the water supply to the consumer.

(c) When the pressure from the department's supply is higher than that for which the irrigation equipment or other facilities are designed, the consumer shall protect the equipment or other facilities by installing and maintaining pressure reducing and relief valves. The board shall not be liable for damage due to pressure conditions or caused by or arising from the failure or defective condition of the pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of the equipment. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-6 Application for water service and service connections. (a) Each prospective customer shall be required to sign the standard application form for the water service desired. Assuming responsibility for the payment of future water charges at the designated locations before water is turned on for any use whatever, the consumer signing the application

form shall be held liable for the payment of all water charges at the designated location. The user of the land shall also be liable for the water charges.

(b) Water charges shall begin when the water service is established and shall continue until due notification from the consumer or until discontinued by the board for failure of the consumer to comply with these rules.

(c) When an application for water service is made by a consumer who was responsible for and failed to pay all water bills previously rendered, regardless of location or time incurred, the department may refuse to furnish water service to that application until the outstanding bills are paid.

(d) A consumer taking possession of a property and using water without having made application to the department for water service to the property, shall be held liable for the water charges from the date of the last recorded meter reading. If proper application for water service is made and if accumulated bills for water service are not paid upon presentation, the water service shall be subject to discontinuance without further notice.

(e) Consumers are required to notify the irrigation district manager at least forty-eight hours in advance of the time delivery is desired and to accept the amount of irrigation water and the time delivery is made by the department consistent with its responsibility set forth in these rules. Consumers may be required to receive water on a definite schedule established by the manager-chief engineer.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-5, 174-6, 174-19)

§13-176-7 New service connections. (a) When the application for a service connection has been approved, the connection shall be installed by the department at the expense of the applicant and thereafter shall be maintained by the department at its expense. There shall be one meter for each service connection unless the department, because of operating necessity, installs two or more meters in parallel. All meters will be sealed by the department before installation and no seal shall be altered or broken except by one of the department's authorized employees.

(b) A deposit equal to the board's estimate of the cost of the service connection shall be required of the applicant before the connection is installed. If the actual cost of the connection is in excess of the deposit, the applicant shall pay for the difference. If the actual cost is less than the deposit, the applicant shall be refunded the difference.

(c) The consumer shall install and connect, at its own expense, the supply pipe to the shut-off valve

or outlet installed by the department. The consumer's supply pipe shall at all times remain the sole property of the consumer who shall be responsible for its maintenance and repair. If the consumer's supply pipe is installed before the service connection is set, the department shall make the connection to it, provided, it is requested by the consumer prior to installation.

(d) Only employees of the department shall be allowed to connect or disconnect the service connection to or from the department's main.

(e) Employees of the department are strictly forbidden to demand or accept personal compensation for services rendered.

(f) No service connection or water main shall be installed by the department in any private land until the department is given proper easements for the main or service connection and vehicular access is available.

(g) All meters shall be installed within the public right-of-way or easements, preferably on the boundary line most nearly perpendicular to the main, unless the board, because of operating necessity, provides otherwise. The valve before the meter is installed for the use of employees of the department.

(h) When the proper size of the service connection for any consumer has been determined and the installation has been made, the department has fulfilled its obligations for providing the size of the service connection and the location thereof. If thereafter the consumer desires a change in size of the service connection or a change in the location, the consumer shall bear all costs of the change.

(i) All work and materials involved with the change in location or elevation of any part of the existing irrigation system made necessary by the new service connection shall be at the expense of the applicant.

(j) The department shall determine the location and size of all meters and service connections for this system. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6)

§13-176-8 Meter reading and rendering of bill.

(a) Meters are read and bills are rendered monthly. Special readings will be made when necessary for closing of accounts or otherwise required.

(b) Closing bills for short periods of time will ordinarily be determined by the amount of water actually used as indicated by the meter reading, plus the acreage assessment for the full month.

(c) For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately and the readings thereof shall not be combined except in cases where the department,

because of operating necessity, installs two or more meters in parallel to serve the same consumer supply pipe.

(d) All notices and bills for water charges shall be mailed by the department to the consumer at the address of the consumer stated in the consumer's application until the department is notified in writing by the consumer of a new address. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-11, 174-19)

*delinquent account*

§13-176-9 Payment of bills. All bills shall be due and payable upon deposit in the United States mail, or upon presentation to the consumer. Payment shall be made at the office of the irrigation district manager or at the department's option, to duly authorized collectors of the department. If any bill is not paid within thirty days after presentation or deposit in the United States mail, the water service shall be subject to discontinuance without further notice. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §174-19)

§13-176-10 Non-registering meters. If a meter fails to register due to any cause except the non-use of water, an average bill may be rendered. This average bill shall be subject to equitable adjustment, taking into account all factors before, during, and after the period of said bill. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-11, 174-19)

§13-176-11 Meter tests and adjustment of bills for inaccuracy of measurement. (a) All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving their premises may request a test of the meter. The requesting consumer will be notified the time of the test and may witness the test. No charge shall be made for meter tests.

(b) If, as a result of the test the meter is found to register more than two percent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption for a period not to exceed six months, unless it can be proved that the error was due to some cause, the date of which can be fixed. Any overcharge shall be computed back to, but not beyond, said date. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-11, 174-19)

Sec. 13-176-12 Discontinuance of service. Water service may be discontinued for the following reasons:

- (1) Water service may be discontinued if the bill has not been paid within thirty days after the mailing or presentation thereof to the consumer.
- (2) If the consumer fails to comply with any of these rules, the department shall have the right to discontinue the service.
- (3) Each consumer about to vacate any premises supplied with water by the department shall give written notice of their intention to vacate prior thereto, specifying the date service is desired to be discontinued. Otherwise the consumer shall be held responsible for all water service furnished to the premises until the department has received the notice of discontinuance. A consumer may not vacate only a portion of their service area.
- (4) The department shall refuse or discontinue water service to any premises if necessary, without giving notice, to protect itself against fraud, abuse, or unauthorized use of water.
- (5) Where negligent or wasteful use of water exists on any premises, the department may discontinue the service if the conditions are not corrected within five days after giving the consumer written notice of intent to do so.
- (6) The department may refuse to furnish water and may discontinue the service to any premises where the demands of the consumer will result in inadequate service to others. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-13 Restoration of water service. If water service is turned off because of failure to pay a bill or violation of any of these rules or for other reasons, all outstanding accounts against the consumer shall be paid or satisfactorily secured before water service will be restored. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-14 Board's equipment on consumer's premises. All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or other purpose, shall continue to be the property of the department and may be repaired, replaced, or removed by the department at any time without the consent of the consumer. The consumer

shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the same. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-15 Damage and accessibility to board's property. (a) Any damage to water mains, service connections, valves, standpipes, or other property of the department shall be paid for by the person or organization responsible for the damage.  
(b) The consumer shall be liable for any damage to a meter or other equipment or property of the department caused by the consumer or their tenants, agents, employees, contractors, licensees, or permittees on the consumer's premises, and the department shall be promptly reimbursed by the consumer for all damages upon demand. In the event settlement for the damage is not promptly made, the department reserves the right to discontinue water service to the premises.  
(c) No obstructions shall be placed upon or around any water meter, valve, or standpipe rendering it inaccessible.  
(d) No animals, livestock, or fowl shall be tethered or tied to any pipe, flume, structure, valve, standpipe, meter, or hydrant of the irrigation system, or permitted to graze or to wander under any structure, or be put or permitted to go into, over or upon, nor shall any dirt, trash, cuttings, rubbish, weed, or debris of any nature be thrown, dumped or put into or upon any ditch, ditch bank, flume, reservoir, tunnel, or other element of the irrigation system.  
(e) No grass, bushes, trees or other windbreak or planting shall be grown or be permitted to grow upon the banks of any ditch or so close thereto as to hang into or over any ditch, reservoir, flume, tunnel, standpipe, valve, meter or hydrant, or other element of the irrigation system, or to inhibit the free passage of water therein. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-16 Ingress to and egress from consumer's premises. Any officer or employee of the department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours for any purpose reasonably connected with the furnishing of water or other service to the premises, and the exercise of any and all rights secured to it by law or these rules. In case any officer or employee is refused admittance to the premises or after being admitted is hindered or prevented from making the inspection, the board may cause the water to be turned



off from the premises after giving twenty-four hours' notice to the owner or occupant of the premises of its intention to do so. [Eff. JUN 22 1981 ]  
 (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-17 Responsibility for water receiving equipment. (a) The consumer shall, at its own risk and expense, furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying, and utilizing water and the board shall not be responsible for any loss or damage caused by the improper installation of the equipment or the negligence, want of proper care, or wrongful act of the consumer, or of any of their tenants, agents, employees, contractors, licensees, or permittees in installing, maintaining, using, operating, or interfering with any equipment.

(b) The department shall not be responsible for damage to property caused by irrigation equipment, spigots, faucets, valves, and other equipment that may be opened when water is turned on at the meter, either when turned on originally or where turned on after a temporary shutdown.

(c) All the consumers' valves shall be slow-closing to prevent water hammer. [Eff. JUN 22 1981 ]  
 (Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-18 Consumer's pumping installation.

(a) Consumers shall not be permitted to install or operate pumps to pump water directly from the main to the consumer's system except in cases approved in writing. No approval shall be granted in cases where, in the opinion of the department, the installation and operation thereof may adversely affect the water service extended by the department to other consumers.

(b) Approvals given by the department under this section are subject to revocation upon ninety days' notice. During this period, a consumer desiring to continue operation of the pump, shall eliminate the objectionable features causing said notification.

(c) No pump shall be equipped with a direct water supply connection for priming purposes except with written permission from the board.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
 (Imp: HRS §§174-5, 174-6, 174-19)

§13-176-19 Cross-connections. (a) No cross-connections shall be made without the written consent of the department.

(b) The department requires the installation of a mechanical or any other methods or devices on the consumer's side of the meter to prevent backflow

whenever the consumer maintains a separate pressure system or separate storage facility, or in any way increases the pressure of the water within the premises above the pressure furnished by the department, or has the equipment, devices or arrangement of piping, storage or industrial methods or processes that might, under certain circumstances, raise the pressure of the water within the premises above the pressure of the water in the mains of the board. Plans for the installations shall be approved by the board.

(c) As a protection to the consumer's water system, a suitable pressure relief valve shall be installed and maintained at their expense when backflow devices are installed on the consumer's side of the meter.

(d) Any device installed for the prevention of backflow as may be required under these rules shall, unless the department approves otherwise in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible, and with adequate working room for inspections, testing, and repairing.

(e) All devices shall be tested at least once every four months and inspected internally not less than once annually. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the consumer. Tests and annual inspection shall be the responsibility of the consumer and shall be made in accordance with methods acceptable to the department. Records of tests and inspections shall be made on forms prescribed by and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in the department's making the tests, needed repairs and replacements, and charging the cost thereof to the consumer.

(f) Upon request by the department, the consumer shall present an affidavit either certifying to the fact that there are no connections or installations of the type prohibited under this rule on the premises or describing in detail all non-conforming connections or installations.

(g) The several conditions relative to the installation and maintenance of connections referred to in this section shall be subject to change to meet changing requirements of the state and county laws, ordinances, and rules.

(h) Failure on the part of the consumer to comply with the department's requirements relative to cross-connection and backflow protection shall be sufficient reason for discontinuing water service until such time the requirements have been met.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §§174-5, 174-6, 174-19)

§13-176-20 Re-sale of water. Unless specifically agreed upon, the consumer shall not re-sell any water received from the board.

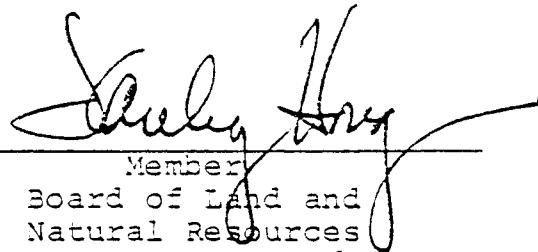
[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §§174-5, 174-6, 174-19)

The rules adopting chapter 176 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Waimea Irrigation System" were adopted on May 8, 1981 by the board of land and natural resources following a public hearing held on April 10, 13, 14, and 15, 1981, after public notice was given in The Honolulu Star Bulletin on March 21, 1981, and the Hawaii Tribune Herald, the Maui News, and the Garden Island on March 27, 1981.

This rule shall take effect ten days after filing with the office of the lieutenant governor.




Chairperson and Member  
Board of Land and  
Natural Resources

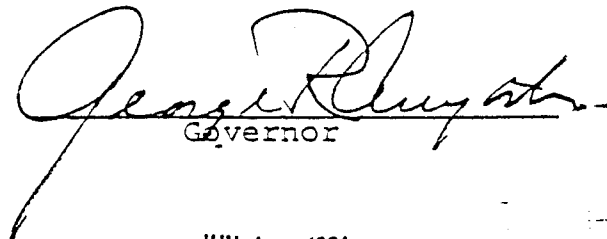


Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General



Governor

JUN 12 1981

Date Filed

RECORDED BY

JUN 12 1981

FILED IN OFFICE

Chapter 177

IRRIGATION WATER SERVICE,  
WAIMANALO IRRIGATION SYSTEM

Rules Repealing the Department of Land and Natural Resources, Division of Water and Land Development Regulation 3, and Adopting Chapter 177 of Title 13, Administrative Rules.

May 3, 1981

SUMMARY

1. Regulation 3 of the Division of Water and Land Development, Department of Land and Natural Resources entitled, "Rules and Regulations Governing Irrigation Water Service to Consumers of the Waimanalo Irrigation System" is repealed.

2. Chapter 177 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Waimanalo Irrigation System" implementing chapter 174, HRS, is adopted.

Regulation 3. "Rules Governing Irrigation Water  
Service to Consumers of the Waimanalo Irrigation  
System". Division of Water and Land Development.  
REPEALED [ JUN 22 1981 ].

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

CHAPTER 177

RULES GOVERNING IRRIGATION WATER SERVICE  
TO CONSUMERS OF THE WAIMANALO IRRIGATION SYSTEM

§13-177-1	General
§13-177-2	Definitions
§13-177-3	General conditions
§13-177-4	Conservation measures and inter- ruption of water supply
§13-177-5	Elevation agreement, pressure condition for water supplied by pipe
§13-177-6	Application for water service and connections
§13-177-7	New service connections
§13-177-8	Reading of measuring devices and rendering of bill
§13-177-9	Payment of bills
§13-177-10	Non-registering meters
§13-177-11	Meter tests and adjustment of bills for inaccuracy of measurement
§13-177-12	Discontinuance of service
§13-177-13	Restoration of water service
§13-177-14	Board's equipment on consumer's premises
§13-177-15	Damage and accessibility to board's property
§13-177-16	Ingress to and egress from consumer's premises
§13-177-17	Responsibility for water receiving equipment
§13-177-18	Consumer's pumping installations for water supplied by pipe or distribution ditches and flumes
§13-177-19	Cross-connections for water supplied by pipe
§13-177-20	Re-sale of water

Historical Note: Chapter 177 of Title 13, Administrative Rules, is based substantially on Regulation 3, entitled, "Rules and Regulations Governing Irrigation Water Service to Consumers of the Waimanalo Irrigation System". [Eff. 7-2-73; R JUN 22 1981 ]



§13-177-1 General. (a) These rules establish the practices governing service of irrigation water from the Waimanalo irrigation system and define the obligations of the board to consumers and of the consumers to the board.

(b) It is the policy of the board to render adequate and satisfactory service to all consumers and to encourage courtesy to the public by all its employees. The board desires to cooperate with consumers to eliminate water waste and to minimize charges to the consumer.

(c) Prospective consumers are advised to obtain information from the department of the availability of water, pressure conditions, and other pertinent data.  
[Eff. JUN 22 1981] (Auth: HRS §174-5)  
(Imp: HRS §174-5)

§13-177-2 Definitions. As used herein unless otherwise provided:

"Acreage assessments" means the charge levied by the board based upon the consumer's arable lands on an acreage basis.

"Board" means the board of land and natural resources of the State of Hawaii which is the governing body of the department of land and natural resources.

"Consumer" means the person, firm, corporation, partnership, association or public or private organization of any character, whether owner or tenant, whose name appears on the records of the department of land and natural resources as responsible and liable for receiving irrigation water service from the board.

"Consumer's supply pipe" means the pipe extending from the consumer's end of the service connection to his service areas.

"Cost of service connection" means the sum of the cost of the labor, materials, transportation, equipment and road repair, if any, and other incidental charges necessary for the complete installation of a service connection but excluding the cost of the meter.

"Department" means the department of land and natural resources.

"Irrigation district manager" means the person holding the office of irrigation district manager of the Waimanalo irrigation system of the department acting directly or through his authorized assistants.

"Main" or "main pipe" means the supply or distribution pipe to which service connections are made.

"Manager-chief engineer" means the person holding the office of manager-chief engineer of the division of water and land development of the department acting directly or through his authorized assistants including the irrigation district manager.

"Measuring device" means a weir, meter or other suitable means for measuring the amount of water received by the consumer from the irrigation system.

"Service connection" means those measuring devices, facilities, and equipment supplying water from the irrigation system to the consumer. For metered connection, it includes the main tap, pipe, fittings and valves from the mains to and including the meter.

"State" means the State of Hawaii.

"Waimanalo irrigation system" means the ditches, flumes, weirs, siphons, reservoirs, tunnels, pipelines, valves, pumps and controls, and other elements comprising the irrigation system operated by the board to serve the land situated in Waimanalo on the island of Oahu.

"Water charges" means the sum of the water tolls and acreage assessments.

"Water tolls" means the charges established by the board for irrigation water supplied by it to consumers. [Eff. JUN 22 1981 ] (Auth: HRS §174-5) (Imp: HRS §174-5)

§13-177-3 General conditions. (a) Upon proper application a prospective consumer whose premises are within the service limits established by the board for the Waimanalo irrigation system and whose premises are adjacent to an irrigation ditch or a distribution main, where pressure conditions permit, may obtain irrigation water service; provided, that there is a sufficient water supply developed to take on new or additional service without detriment to those already served, and the consumer agrees to abide by these rules.

(b) The water supplied by the Waimanalo irrigation system is intended to be used only for production of crops and orchards. Water may not be used for any other purpose except with the express written consent of the board. In this connection, the board makes no guaranty, warranty, or representation, expressed or implied, as to the quality, condition, or fitness of the water supplied for any use or purpose.

(c) When an extension of main is necessary or where large quantities of water are required or a substantial investment is necessary to provide service, the consumer shall be informed by the department as to the conditions and charges to be made for that particular area and situation in question before water service may be approved. Before water service commences, the consumer and the board shall execute an agreement which will include the specific conditions and charges to be made for that particular area. The board shall have the right to refuse service to a consumer if an

agreement cannot be executed.

(d) All water supplied by the department will be measured by means of suitable devices. The water tolls shall be in accordance with the rates established by the board. The department shall determine the location and size of all measuring devices and service connections to this system. All service connections shall become the property of the department for operation and maintenance after installation and new connections or disconnections may be made thereto by the board at any time.

(e) The total arable area of the consumer shall be levied an acreage assessment in addition to the water tolls. The department shall determine the area of each consumer's land subject to this assessment. The unit of area measured shall be the acre and fractional acres shall be considered to be a full acre. Once an area is levied the acreage assessment, it may not thereafter be withdrawn from this assessment; provided, however, that should the consumer lose the right to cultivate a portion of their acreage, said acreage may be withdrawn from the acreage assessment.

(f) In order to assure the maximum and most efficient use of the irrigation water available, no one who owns or occupies less than three acres of agricultural land at Waimanalo suitable for irrigation will be permitted to become a consumer.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-6, 174-12)

§13-177-4 Conservation measures and interruption of water supply. (a) The department shall exercise reasonable diligence and care to deliver an adequate supply of water to the consumer and to avoid shortage or interruptions in water service, whenever possible, but shall not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

(b) Whenever in the board's opinion special conservation measures are deemed necessary in order to forestall water shortage and a consequent emergency, the board may restrict or ration the use of water by any reasonable method of control.

(c) The department reserves the right at any and all times to shut off water from the mains with reasonable notice for the purpose of making repairs, extensions, alterations, or for other reasons. Consumers who require a continuous supply of water shall provide, at their own cost, emergency water storage and any check valves or other devices necessary for the protection of equipment or fixtures against failure of the pressure or supply of water in the department's main or ditches. Repairs or improvements shall be prosecuted as rapidly as practicable and at the time

or times as will cause the least inconvenience to the consumer.

(d) The department will deliver water to the land of each consumer at the level and at the outlet as the department may establish upon their land convenient with the operation of the department's irrigation system, and it shall be the responsibility of each consumer to provide for the distribution of the water upon their land by their own method.

(e) Shortage of irrigation water supply for the Waimanalo irrigation system during seasonal drought periods may occur. During these periods, the department shall supply only the amounts of irrigation water and at the times as in the best judgment of the department will assure all consumers of receiving a fair share of the irrigation water available.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-5, 174-6, 174-19)

§13-177-5 Elevation agreement, pressure condition for water supplied by pipe. (a) The department shall make every effort to maintain pressure but shall not accept responsibility for maintaining pressure in its water main.

(b) Where property is situated at an elevation that it cannot be assured of dependable supply or of adequate service from the distribution system, the consumer, in consideration of connection with the department's system, shall agree to accept the water service as the department is able to render from its existing facilities and to install, if necessary, and maintain at their own expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water. When required, the consumer shall install protective devices between the consumer's supply line and the service connection. The consumer shall execute a written release to the department for all claims on account of any inadequacy of the department's system or inadequacy of the water supply to the consumer.

(c) When the pressure from the department's supply is higher than that for which the irrigation equipment or other facilities are designed, the consumer shall protect the equipment or other facilities by installing and maintaining pressure reducing and relief valves. The board shall not be liable for damage due to pressure conditions or caused by or arising from the failure or defective condition of the pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of the equipment. [Eff. JUN 22 1981 ]

(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-6 Application for water service and service connections. (a) Each prospective customer shall be required to sign the standard application form for the water service desired. Assuming responsibility for the payment of future water charges at the designated locations before water is turned on for any use whatever, the consumer signing the application form shall be held liable for the payment of all water charges at the designated location. The user of the land shall also be liable for the water charges.

(b) Water charges shall begin when the water service is established and shall continue until due notification from the consumer or until discontinued by the board for failure of the consumer to comply with these rules.

(c) When an application for water service is made by a consumer who was responsible for and failed to pay all water bills previously rendered, regardless of location or time incurred, the department may refuse to furnish water service to that application until the outstanding bills are paid.

(d) A consumer taking possession of a property and using water without having made application to the department for water service to the property, shall be held liable for the water charges from the date of the last recorded meter reading. If proper application for water service is made and if accumulated bills for water service are not paid upon presentation, the water service shall be subject to discontinuance without further notice.

(e) Consumers are required to notify the irrigation district manager at least forty-eight hours in advance of the time delivery is desired and to accept the amount of irrigation water and the time delivery is made by the department consistent with its responsibility set forth in these rules. Consumers may be required to receive water on a definite schedule established by the manager-chief engineer.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-5, 174-6, 174-19)

§13-177-7 New service connections. (a) When the application for a service connection has been approved, the connection shall be installed by the department at the expense of the applicant and thereafter shall be maintained by the department at its expense. For water supplied through pipes, there shall be one meter for each service connection unless the department, because of operating necessity, installs two or more meters in parallel. All meters will be sealed by the department before installation and no seal shall be altered or broken except by one of the department's authorized employees.

(b) A deposit equal to the board's estimate of the cost of the service connection shall be required of the applicant before the connection is installed. If the actual cost of the connection is in excess of the deposit, the applicant shall pay for the difference. If the actual cost is less than the deposit, the applicant shall be refunded the difference.

(c) The consumer shall install and connect, at its own expense, the supply pipe to the shut-off valve or outlet installed by the department. The consumer's supply pipe or ditch shall at all times remain the sole property of the consumer who shall be responsible for its maintenance and repair. If the consumer's supply pipe is installed before the service connection is set, the department shall make the connection to it, provided, however, it is requested by the consumer prior to installation.

(d) Only employees of the department shall be allowed to connect or disconnect the service connection to or from the department's ditch or main.

(e) Employees of the department are strictly forbidden to demand or accept personal compensation for services rendered.

(f) No service connection or water main shall be installed by the department in any private land until the department is given proper easements for the main or service connection and vehicular access is available.

(g) All measuring devices shall be installed within the public right-of-way or easements, preferably on the boundary line most nearly perpendicular to the ditch or main, unless the board, because of operating necessity, provides otherwise. The valve before the meter is installed for the use of employees of the department.

(h) When the proper size of the service connection for any consumer has been determined and the installation has been made, the department has fulfilled its obligations for providing the size of the service connection and the location thereof. If thereafter the consumer desires a change in size of the service connection or a change in the location the consumer shall bear all costs of the change.

(i) All work and materials involved with the change in location or elevation of any part of the existing irrigation system made necessary by the new service connection shall be at the expense of the applicant.

(j) The department shall determine the location and size of all measuring devices and service connections for this system. [Eff. JUN 22 1981 ]

(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-8 Reading of measuring devices and rendering of bill. (a) Irrigation water delivered by ditches to the consumer shall be measured at weirs at the point or points of delivery to the consumer's land. The agents or employees of the board shall take readings from the weirs at least three times during the period of delivery of the irrigation water and the readings taken shall be used by the board to determine the amount of irrigation water delivered. If the board does not deliver the amount of irrigation water requested by the consumer, its agent or employee shall notify the consumer at that time of the amount of water delivered. All protests by the consumer shall be made within seven days of the date of delivery. If no protest is made by the consumer within that period, the amount of irrigation water determined by the board to have been delivered, from its readings aforesaid, shall be deemed conclusive.

(b) Meters are read and bills are rendered monthly. Special readings shall be made when necessary for closing of accounts or otherwise required.

(c) Closing bills for short periods of time will ordinarily be determined by the amount of water actually used as indicated by the meter reading plus the acreage assessment for the full month.

(d) All notices and bills for water charges shall be mailed by the department to the consumer at the address of the consumer stated in the consumer's application until the department is notified in writing by the consumer of a new address. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-11, 174-19)

*delinquent account*

§13-177-9 Payment of bills. All bills shall be due and payable upon deposit in the United States mail, or upon presentation to the consumer. Payment shall be made at the office of the irrigation district manager or at the department's option, to duly authorized collectors of the department. If any bill is not paid within thirty days after presentation or deposit in the United States mail, the water service shall be subject to discontinuance without further notice. [Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §174-19)

§13-177-10 Non-registering meters. If a meter fails to register due to any cause except the non-use of water, an average bill may be rendered. This average bill shall be subject to equitable adjustment, taking into account all factors before, during and after the period of said bill.  
[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §§174-5, 174-6, 174-11, 174-19)

§13-177-11 Meter tests and adjustment of bills for inaccuracy of measurement. (a) All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving their premises may request a test of the meter. The requesting consumer will be notified to the time of the test and may witness the test. No charge shall be made for meter tests.

(b) If, as a result of the test the meter is found to register more than two percent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption for a period not to exceed six months, unless it can be proved that the error was due to some cause, the date of which can be fixed. Any overcharge shall be computed back to, but not beyond, said date.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §§174-5, 174-6, 174-11, 174-19)

§13-177-12 Discontinuance of service. Water service may be discontinued for the following reasons:

- (1) Water service may be discontinued if the bill has not been paid within thirty days after the mailing or presentation thereof to the consumer. However, acreage service charges shall continue in spite of such discontinuance of service.
- (2) If the consumer fails to comply with any of these rules, the department shall have the right to discontinue the service.
- (3) Each consumer about to vacate any premises supplied with water by the department shall give written notice of their intention to vacate prior thereto, specifying the date service is desired to be discontinued. Otherwise the consumer shall be held responsible for all water service furnished to the premises until the department has received the notice of discontinuance. A consumer may not vacate only a portion of his service area.
- (4) The department shall refuse or discontinue water service to any premises - if necessary, without giving notice, to protect itself against fraud, abuse, or unauthorized use of water.
- (5) Where negligent or wasteful use of water exists on any premises, the department may discontinue the service if the conditions are not corrected within five days after giving the consumer written notice of intent to do so.



- (6) The department may refuse to furnish water and may discontinue the service to any premises where the demands of the consumer will result in inadequate service to others. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-13 Restoration of water service. If water service is turned off because of failure to pay a bill or violation of any of these rules or for other reasons, all outstanding accounts against the consumer must be paid or satisfactorily secured before water service will be restored. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-14 Board's equipment on consumer's premises. All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or other purpose, shall continue to be the property of the department and may be repaired, replaced, or removed by the department at any time without the consent of the consumer. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the same. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-15 Damage and accessibility to board's property. (a) Any damage to ditches, flumes, reservoirs, water mains, service connections, valves, standpipes, or other property of the department shall be paid for by the person or organization responsible for the damage.

(b) The consumer shall be liable for any damage to a weir, meter or other equipment, or property of the department caused by the consumer or their tenants, agents, employees, contractors, licensees, or permittees on the consumer's premises, and the department shall be promptly reimbursed by the consumer for all damages upon demand. In the event settlement for the damage is not promptly made, the department reserves the right to discontinue water service to the premises.

(c) No obstructions shall be placed upon or around any weir, ditches, flumes, water meter, valve, or standpipe rendering it inaccessible.

(d) No animals, livestock or fowl shall be tethered or tied to any pipe, flume, structure, valve, standpipe, meter, or hydrant of the irrigation system, or permitted to graze or to wander under any structure,

or be put or permitted to go into, over or upon, nor shall any dirt, trash, cuttings, rubbish, weed or debris of any nature be thrown, dumped, or put into or upon any ditch, ditch bank, flume, reservoir, tunnel, or other element of the irrigation system.

(e) No grass, bushes, trees or other windbreak or planting shall be grown or be permitted to grow upon the banks of any ditch or so close thereto as to hang into or over any ditch, reservoir, flume, tunnel, standpipe, valve, meter or hydrant, or other element of the irrigation system, or to inhibit the free passage of water therein. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-16 Ingress to and egress from consumer's premises. Any officer or employee of the department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours for any purpose reasonably connected with the furnishing of water or other service to the premises, and the exercise of any and all rights secured to it by law or these rules. In case any officer or employee is refused admittance to the premises or after being admitted is hindered or prevented from making the inspection, the board may cause the water to be turned off from the premises after giving twenty-four hours' notice to the owner or occupant of the premises of its intention to do so.  
[Eff. JUN 22 1981 ] (Auth: HRS §174-5)  
(Imp: HRS §§174-5, 174-6, 174-19)

§13-177-17 Responsibility for water receiving equipment. (a) The consumer shall, at its own risk and expense, furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying, and utilizing water and the board shall not be responsible for any loss or damage caused by the improper installation of the equipment or the negligence, want of proper care, or wrongful act of the consumer, or of any of their tenants, agents, employees, contractors, licensees, or permittees in installing, maintaining, using, operating, or interfering with any equipment.

(b) The department shall not be responsible for damage to property caused by irrigation equipment, spigots, faucets, valves, and other equipment that may be opened when water is turned on at the meter, either when turned on originally or where turned on after a temporary shutdown.

(c) All the consumers' valves shall be slow-closing to prevent water hammer. [Eff. JUN 22 1981 ]  
(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-18 Consumer's pumping installation for water supplied by pipe for distribution ditches and flumes. (a) Consumers shall not be permitted to install or operate pumps to pump water directly from the main or distribution ditches and flumes to the consumer's system except in cases approved in writing by the board. No approval shall be granted in cases where, in the opinion of the department, the installation and operation thereof may adversely affect the water service extended by the department to other consumers.

(b) Approvals given by the department under this section are subject to revocation upon ninety days' notice. During this period, a consumer desiring to continue operation of the pump, shall eliminate the objectionable features causing said notification.

(c) No pump shall be equipped with a direct water supply connection for priming purposes except with written permission from the board.

(d) No pump shall be installed directly over the ditches or flumes. [Eff. JUN 22 1981 ]

(Auth: HRS §174-5) (Imp: HRS §§174-5, 174-6, 174-19)

§13-177-19 Cross-connections for water supplied by pipe. (a) No cross-connections shall be made without the written consent of the department.

(b) The department requires the installation of a mechanical or any other method or device on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or separate storage facility, or in any way increases the pressure of the water within the premises above the pressure furnished by the department, or has the equipment, devices or arrangement of piping, storage, or industrial methods or processes that might, under certain circumstances, raise the pressure of the water within the premises above the pressure of the water in the mains of the board. Plans for the installations shall be approved by the board.

(c) As a protection to the consumer's water system, a suitable pressure relief valve shall be installed and maintained at their expense when backflow devices are installed on the consumer's side of the meter.

(d) Any device installed for the prevention of backflow as may be required under these rules shall, unless the department approves otherwise in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible, and with adequate working room for inspections, testing and repairing.

(e) All devices shall be tested at least once every four months and inspected internally not less than once annually. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the consumer. Tests and annual inspection shall be the responsibility of the consumer and shall be made in accordance with methods acceptable to the department. Records of tests and inspections shall be made on forms prescribed by and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in the department's making the tests, needed repairs and replacements, and charging the cost thereof to the consumer.

(f) Upon request by the department, the consumer shall present an affidavit either certifying to the fact that there are no connections or installations of the type prohibited under this rule on the premises or describing in detail all non-conforming connections or installations.

(g) The several conditions relative to the installation and maintenance of connections referred to in this section shall be subject to change to meet changing requirements of the state and county laws, ordinances, and rules.

(h) Failure on the part of the consumer to comply with the department's requirements relative to cross-connection and backflow protection shall be sufficient reason for discontinuing water service until such time the requirements have been met.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

(Imp: HRS §§174-5, 174-6, 174-19)

§13-177-20 Re-sale of water. Unless specifically agreed upon, the consumer shall not re-sell any water received from the board.

[Eff. JUN 22 1981 ] (Auth: HRS §174-5)

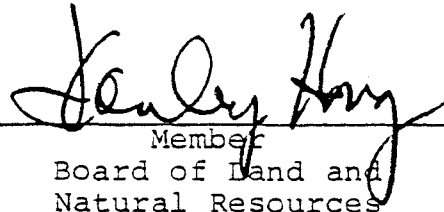
(Imp: HRS §§174-5, 174-6, 174-19)

The rules adopting chapter 177 of Title 13, Administrative Rules entitled "Rules Governing Irrigation Water Service to Consumers of the Waimanalo Irrigation System" were adopted on May 8, 1981 by the board of land and natural resources following a public hearing held on April 10, 13, 14, and 15, 1981, after public notice was given in The Honolulu Star Bulletin on March 21, 1981, and the Hawaii Tribune Herald, the Maui News, and the Garden Island on March 27, 1981.

This rule shall take effect ten days after filing with the office of the lieutenant governor.



Chairperson and Member  
Board of Land and  
Natural Resources



Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General



Governor

JUN 12 1981

Date Filed

REC'D. BY

JUN 12 PM 2 24

GOVERNOR'S OFFICE

## CONSERVATION DISTRICT USE APPLICATION

- I. All persons must submit an application and have it approved prior to the initiation of any new, change in existing, or, expansion of land use within the Conservation District, except as provided in Subchapter 13-2-4 of the Department of Land and Natural Resources Administrative Rules. If a properly submitted application is not acted on within one hundred and eighty (180) days, the landowner may automatically put the land to the use(s) proposed. This is the normal processing time.

All applications must be signed by the landowner prior to submission to the Department of Land and Natural Resources. No application shall be considered submitted when the information required in the application is incomplete.

All applications are subject to the State and Federal environmental requirements. Any requirement must be satisfied prior to Board approval. The rules and regulations relating to the environment may be obtained at the Office of Environmental Quality Control. For information, call 548-6915.

All applications are subject to County Special Management Area requirements. Any requirement must be satisfied from your County prior to Board approval.

A public hearing is required for: 1) all commercial uses; 2) for any conditional use in the P Subzone; or 3) any use which the Board determines is of substantial public interest.

Complete the application in the following manner:

1. For permitted, accessory, occasional use, or temporary variance, complete pages 1-3 only;
2. For conditional use, complete pages 1-4.

All correspondence will be directed to the applicant. Submit eighteen (18) copies of the completed application and all attachments. Reduce or fold attachments to 8½" x 11". Mail application and attachments, to: Department of Land and Natural Resources, P. O. Box 621, Honolulu, Hawaii 96809. For information call 548-7519.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

Dear Applicant:

This is a Department of Land and Natural Resources Master Application Form. It is part of the Department's effort to streamline the permit process.

This form is to be used if you desire to apply for one or more of the major land or water permits which are administered by this department. They are as follows:

<u>TYPE</u>	<u>PERMIT</u>
A.	Use of State Lands, including Submerged State Lands for Any Purpose, and
B.	Conservation District Use Application for either Private or Public Lands
C.	A Permit to <u>Withdraw</u> Water for a Beneficial Use, Within any designated Ground Water Control Area
D.	A Permit to <u>Supply</u> Water for a Beneficial Use Within any designated Ground Water Control Area
E.	A Well Drilling or Modification Permit Anywhere Within the State

INSTRUCTIONS

All Applicants Are Required To Fill Out Page 1.  
Applicants for Type A Permit Must Fill Out Pages 1-2.  
Applicants for Type B Permit Must Fill Out Pages 1-4.  
Applicants for Type C or D Permit Must Fill Out Pages 1, 2, 5.  
Applicants for Type E Permit Must Fill Out Pages 1, 2, 6, 7.

Please follow the instructions on the respective pages. Should you desire to apply for more than one permit at the same time, please fill out the required pages, and indicate to us so that we may process them simultaneously. In the case that you are submitting a Conservation District Use Application, please refer to page 8 for special instructions.

February 1983

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

DEPARTMENT MASTER APPLICATION FORM

FOR DLNR USE ONLY

Reviewed by \_\_\_\_\_  
Date \_\_\_\_\_  
Accepted by \_\_\_\_\_  
Date \_\_\_\_\_  
Docket/File No. \_\_\_\_\_  
180-Day Exp. \_\_\_\_\_  
EIS Required \_\_\_\_\_  
PH Required \_\_\_\_\_  
Board Approved \_\_\_\_\_  
Disapproved \_\_\_\_\_  
Well No. \_\_\_\_\_

(Print or Type)

I. LANDOWNER/WATER SOURCE OWNER  
(If State land, to be filled  
in by Government Agency in  
control of property)

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

SIGNATURE \_\_\_\_\_

Date \_\_\_\_\_

II. APPLICANT (Water Use, omit if applicant  
is landowner)

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

Interest in Property \_\_\_\_\_

(Indicate interest in property; submit  
written evidence of this interest)

\*SIGNATURE \_\_\_\_\_

Date \_\_\_\_\_

\*If for a Corporation, Partnership,  
Agency or Organization, must be signed  
by an authorized officer.

III. TYPE OF PERMIT(S) APPLYING FOR

( ) A. State Lands

( ) B. Conservation District Use

( ) C. Withdraw Water From A Ground  
Water Control Area

( ) D. Supply Water From A Ground  
Water Control Area

( ) E. Well Drilling/Modification

IV. WELL OR LAND PARCEL LOCATION REQUESTED

District \_\_\_\_\_

Island \_\_\_\_\_

County \_\_\_\_\_

Tax Map Key \_\_\_\_\_

Area of Parcel \_\_\_\_\_  
(Indicate in acres or  
sq. ft.)

Term (if lease) \_\_\_\_\_



V. Environmental Requirements

Pursuant to Chapter 343, Hawaii Revised Statutes, and in accordance with Section 1:30B of the EIS Regulations for applicant actions, an Environmental Assessment of the proposed use must be attached. The Environmental Assessment shall include, but not be limited to the following:

- A. Identification of application;
- B. Description of proposed use and statement of objectives;
- C. Description of affected environment, including appropriate maps and plans to show location, topography, site improvements, existing utilities and vegetation and archaeological/historical sites, if any. (See page 5, section I).
- D. General description of the technical, economic, social and environmental characteristics of the proposed use.

NOTE: The Environmental Assessment may be substituted in lieu of the information required above.

INFORMATION REQUIRED FOR ALL USES

I. Description of Parcel

- A. Existing structures/Use. (Attach description or map).
- B. Existing utilities. (If available, indicate size and location on map. Include electricity, water, telephone, drainage, and sewerage).
- C. Existing access. (Provide map showing roadways, trails, if any. Give street name. Indicate width, type of paving and ownership).
- D. Vegetation. (Describe or provide map showing location and types of vegetation. Indicate if rare native plants are present).
- E. Topography; if ocean area, give depths. (Submit contour maps for ocean areas and areas where slopes are 40% or more. Contour maps will also be required for uses involving tall structures, gravity flow and other special cases).
- F. If shoreline area, describe shoreline. (Indicate if shoreline is sandy, muddy, rocky, etc. Indicate cliffs, reefs, or other features such as access to shoreline).
- G. Existing covenants, easements, restrictions. (If State lands, indicate present encumbrances).
- H. Historic sites affected. (If applicable, attach map and descriptions).

II. Description: Describe the activity proposed, its purpose and all operations to be conducted. (Use additional sheets as necessary).

III. Commencement Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

IV. TYPE OF USE REQUESTED (Mark where appropriate)

- 1. Permitted Use (exception occasional use);  
DLNR Title 13, Chapter 2, Section \_\_\_\_\_; Subzone \_\_\_\_\_.
- 2. Accessory Use (accessory to a permitted use):  
DLNR Title 13, Chapter 2, Section \_\_\_\_\_; Subzone \_\_\_\_\_.
- 3. Occasional Use: Subzone \_\_\_\_\_.
- 4. Temporary Variance: Subzone \_\_\_\_\_.
- 5. Conditional Use: Subzone \_\_\_\_\_.

Area of Proposed Use \_\_\_\_\_  
(Indicate in acres or sq. ft.)

Name & Distance of Nearest Town or Landmark \_\_\_\_\_

Boundary Interpretation (If the area is within 40 feet of the boundary of the Conservation District, include map showing interpretation of the boundary by the State Land Use Commission).

Conservation District Subzone \_\_\_\_\_  
County General Plan Designation \_\_\_\_\_

V. FILING FEE

1. Enclose \$50.00. All fees shall be in the form of cash, certified or cashier's check, and payable to the State of Hawaii.
2. If use is commercial, as defined, submit additional public hearing fee of \$50.00.

INFORMATION REQUIRED FOR CONDITIONAL USE ONLY

I. Plans: (All plans should include north arrow and graphic scale).

- A. Area Plan: Area plan should include but not be limited to relationship of proposed uses to existing and future uses in abutting parcels; identification of major existing facilities; names and addresses of adjacent property owners.
- B. Site Plan: Site plan (maps) should include, but not be limited to, dimensions and shape of lot; metes and bounds, including easements and their use; existing features, including vegetation, water area, roads, and utilities.
- C. Construction Plan: Construction plans should include, but not be limited to, existing and proposed changes in contours; all buildings and structures with indicated use and critical dimensions (including floor plans); open space and recreation areas; landscaping, including buffers; roadways, including widths; offstreet parking area; existing and proposed drainage; proposed utilities and other improvements; revegetation plans; drainage plans including erosion sedimentation controls; and grading, trenching, filling, dredging or soil disposal.
- D. Maintenance Plans: For all uses involving power transmission, fuel lines, drainage systems, unmanned communication facilities and roadways not maintained by a public agency, plans for maintenance shall be included.
- E. Management Plans: For any appropriate use of animal, plant, or mineral resources, management plans are required.
- F. Historic or Archaeological Site Plan: Where there exists historic or archaeological sites on the State or Federal Register, a plan must be submitted including a survey of the site(s); significant features; protection, salvage, or restoration plans.

- II. Subzone Objective: Demonstrate that the intended use is consistent with the objective of the subject Conservation District Subzone (as stated in Title 13, Chapter 2).

DESIGNATED GROUND WATER CONTROL AREA

APPLICATION FOR: (check one)

       PERMIT TO WITHDRAW WATER FOR BENEFICIAL USE  
       PERMIT TO SUPPLY WATER FOR BENEFICIAL USE

Fill out, sign page 1, send application with pertinent attachments to Department of Land and Natural Resources, P. O. Box 621, Honolulu, Hawaii 96809. A non-refundable filing fee of \$100 is required, excepting military, federal, state, and local government agencies.

1. REQUESTED BENEFICIAL USE OF WATER:

       Domestic           Municipal           Military           Agricultural           Industrial  
       Other \_\_\_\_\_  
                    (specify)

Appropriately describe nature and purpose of requested use: \* \_\_\_\_\_

\_\_\_\_\_. Proposed commencement date of water use: \_\_\_\_\_.

2. REQUESTED AMOUNT OF WITHDRAWAL OR SUPPLY:

Average Annual \_\_\_\_\_ mgd; Maximum Month \_\_\_\_\_ mgd; Maximum Day \_\_\_\_\_ mgd.

Appropriately describe schedule or times of taking requested withdrawal:

\_\_\_\_\_  
\_\_\_\_\_

3. NATURE AND TERM OF REQUESTED PERMIT:           Temporary           Permanent  
Requested period of permit \_\_\_\_\_

4. PROPOSED SOURCE OF WATER SUPPLY:

       Existing source           Modification of existing source           New Source

Briefly describe existing or proposed source and any related facilities and submit map, plot plan, and plans or drawings of source of supply:

\_\_\_\_\_  
\_\_\_\_\_

If construction work is proposed for new or modified existing source, give:

Commencement Date \_\_\_\_\_ Completion Date \_\_\_\_\_

5. ASSESSMENT OF REQUESTED WATER USE OR SUPPLY:

In a separate attachment to this application, applicant must provide a written assessment addressing the desirability of issuing the requested permit, including such considerations as the availability of water, the beneficial purpose of the proposed water use, and the impact if any, of the proposed water use on existing permitted uses, preserved uses, and individual household uses.

\* Use additional sheets as necessary.

APPLICATION FOR (check one)

WELL DRILLING PERMIT

WELL MODIFICATION PERMIT

Instructions: Send completed application and attachments to the Department of Land and Natural Resources, P.O. Box 621, Honolulu, Hawaii 96809.

Reference: Chapter 166, Department of Land and Natural Resources.

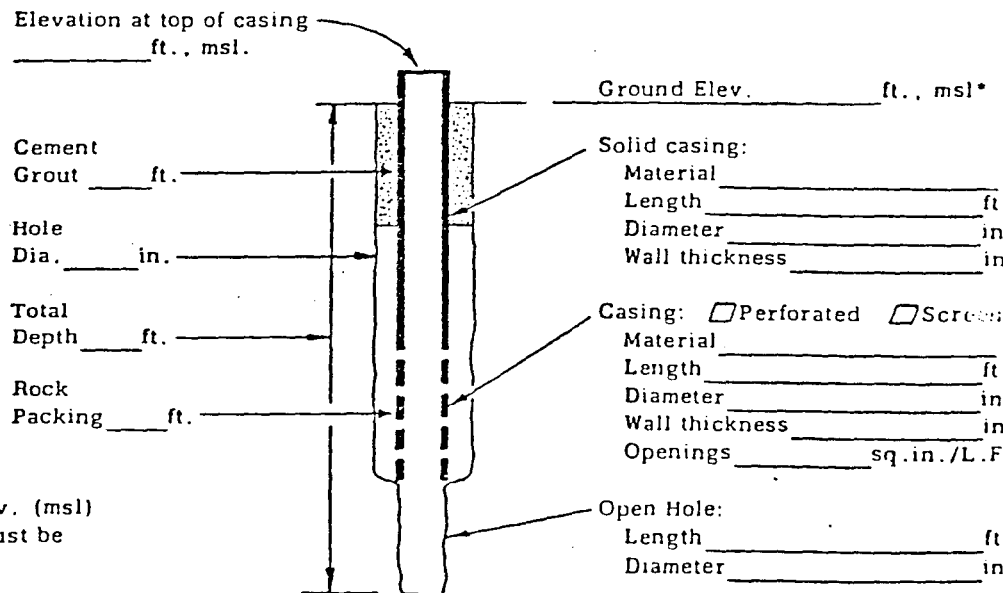
Is the well located in a Designated Ground Water Control Area?        Yes        No

If "yes", application must be accompanied by a Water Use and/or Water Supply Permit and a non-refundable filing fee of \$100 payable to the Department of Land and Natural Resources. However, if application is for minor modification of well, filing fee may be waived. If "no", no filing fee is required. Filing fee is waived for federal, state, and county government agencies.

1. WELL NAME AND/OR LOCATION: \_\_\_\_\_. Attach a plot plan showing well location referenced to established property boundaries.
2. PROPOSED DRILLING COMPANY: \_\_\_\_\_.
3. PROPOSED WORK:     \_\_\_ Drill new well     \_\_\_ Deepen     \_\_\_ Redrill     \_\_\_ Alter     \_\_\_ Seal  
                    \_\_\_ Abandon     \_\_\_ Install new pump     \_\_\_ Replace pump     \_\_\_ Modify pump

Fill in the diagram and briefly describe the proposed work (use back of form if necessary).

### PROPOSED SECTION OF WELL



\*Approximate elev. at filing. Final elev. (msl) by a surveyor licensed by the State must be submitted at start of construction.

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4. PROPOSED USE: ☐ Municipal ☐ Military ☐ Agricultural ☐ Industrial  
☐ Domestic ☐ Disposal ☐ Other (specify) \_\_\_\_\_

5. PROPOSED AMOUNT OF WITHDRAWAL: Check most appropriate box and fill in amount.

☐ Daily \_\_\_\_\_ Gallons. ☐ Monthly \_\_\_\_\_ Gallons. ☐ Yearly \_\_\_\_\_ Gallons.

6. PROPOSED PUMP OR FLOW CAPACITY \_\_\_\_\_ Gallons per minute

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
HONOLULU, HAWAII

TITLE 13  
CHAPTER 2  
(REGULATION NO. 4)

ADMINISTRATIVE RULES OF THE DEPARTMENT OF LAND  
AND NATURAL RESOURCES, STATE OF HAWAII,  
PROVIDING FOR LAND USE WITHIN THE  
CONSERVATION DISTRICT, PROVIDING FOR  
SUBZONES, USES, APPEALS, ENFORCEMENT AND  
PENALTY, PURSUANT TO CHAPTER 183-41,  
HAWAII REVISED STATUTES, AS AMENDED

Rules Repealing the Department of Land and Natural  
Resources' Conservation District Zoning  
Regulation, Oahu No. 1; Conservation District  
Sub-Zoning Regulation No. 3; and Regulation No. 4;  
and Adopting Chapter 2 of Title 13,  
Administrative Rules  
May 29, 1981

SUMMARY

1. Regulation Oahu No. 1, entitled "Conservation District Zoning Regulation" is repealed.
2. Regulation Hawaii No. 3, entitled "Conservation District Sub-Zoning Regulation, Hawaii" is repealed.
3. Regulation No. 4, entitled "A Regulation of the Department of Land and Natural Resources, State of Hawaii, Providing for Subzones, Uses, Appeals, Enforcement and Penalty, Pursuant to Chapter 183-41, Hawaii Revised Statutes, as Amended," is repealed.
4. Chapter 2 of Title 13, Administrative Rules, entitled "Conservation Districts" is adopted.



Regulation Oahu No. 1, entitled "Conservation District  
Zoning Regulation," Administration, REPEALED.  
[ JUN 22 1981 ]

Regulation Hawaii No. 3, entitled "Conservation  
District Sub-Zoning Regulation, Hawaii," Administration,  
REPEALED. [ JUN 22 1981 ]

Regulation No. 4, entitled "A Regulation of the  
Department of Land and Natural Resources, State of  
Hawaii, Providing for Subzones, Uses, Appeals, Enforce-  
ment and Penalty, pursuant to Chapter 183-41, Hawaii  
Revised Statutes, as Amended," Administration,  
REPEALED. [ JUN 22 1981 ]

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 1 ADMINISTRATION

CHAPTER 2

CONSERVATION DISTRICTS

Subchapter 1 General Provisions

§13-2-1	Definitions
§13-2-2	Certification
§13-2-3	Temporary variance
§13-2-4	Emergency
§13-2-5	Appeals
§13-2-6	Delegation
§13-2-7	Enforcement
§13-2-8	Penalty

Subchapter 2 Subzones

§13-2-9	Establishment
§13-2-10	Boundaries
§13-2-11	Protective (P) subzone
§13-2-12	Limited (L) subzone
§13-2-13	Resource (R) subzone
§13-2-14	General (G) subzone
§13-2-15	Special (SS) subzone

Subchapter 3 Procedures for Permits and Amendments

§13-2-19	Permits
§13-2-20	Applications
§13-2-21	Conditions; guidelines, compliance with laws
§13-2-22	Revocation of permits
§13-2-23	Hearings
§13-2-24	Amendments

Historical Note: Chapter 2 of Title 13, Administrative Rules, is based substantially upon Regulation Oahu No. 1 [Eff. 8/31/62] and Regulation No. 4 [Eff. 9/18/64; am 8/12/66; am 9/9/66; am 4/26/68; am 7/23/71; am 3/23/78] of the Department of Land and Natural Resources. [R JUN 22 1981 ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

§13-2-1 Definitions. As used herein unless otherwise provided:

"Accessory use" means a use which is incidental and subordinate to one of the permitted uses in a subzone.

"Artificial reef" means an area of the sea where man-made objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms to improve fishing opportunities.

"Commercial purpose (use)" means all those activities designed for profit, which include the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility purposes shall not be considered a commercial purpose.

"Conditional use" means a use, other than a permitted use, including subdivision, which may be allowed by the board under certain conditions as set forth in this chapter and as determined by the board.

"Conservation" means a practice, by both government and private landowners, of protecting and preserving, by judicious development and utilization, the natural and scenic resources attendant to land, including territorial waters within the State, to ensure optimum long-term benefits for the inhabitants of the State.

"Conservation district" means those lands within the various counties of the State bounded by the conservation district line as established under the provisions of Act 187, SLH 1961, and Act 205, SLH 1963, or future amendments thereto.

"Historic site" means a specifically defined location, site, or area designated on the national or state register of historic places and identified with the lives of historic personages or with important events, or generally containing, but not limited to, ethnographical, physical, archaeological or other objects pertaining to the indigenous culture of the State or that of an introduced culture of significance to the State.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Marine sanctuary" means an area of the sea designated to preserve, protect, conserve, propagate, and manage fish and other marine life where fishing may be prohibited or controlled and where other uses of the marine resources are restricted by rule or statute.

"Nonconforming use" means:

- (1) The lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district; or
- (2) Any parcel of land not more than ten acres in area which, as of January 31, 1957, was subject to real property taxes and upon which these taxes were being paid, and which was held and intended for residential or farming use, whether actually put to such use or not; provided that the use whether or not established, shall be limited to either:
  - (A) One residential dwelling; or
  - (B) A farm with no more than one residential dwelling.

"Occasional use" means an irregular and infrequent use not to exceed seven days which causes no permanent change in the land, water, or area in which it occurs.

"Permitted use" means a primary use or uses of land as permitted under subchapter 2 or any amendment thereto.

"Plant sanctuary" means an area of land designated to preserve, protect, conserve, and manage particular plant species.

"Public fishing area" means an area designated for the protection, conservation, propagation, and management of fish and where fishing by the public is permitted by rule of the department.

"Public hunting area" means designated areas of land which constitute habitats for game birds or mammals and which are open to the public for hunting and permitted by rule of the department.

"Residence" means a building used or designated and intended to be used as a home or dwelling place for one family.

"Restricted watershed" means a designated area from which the domestic water supply of any city, town, or community is or may be obtained, or an area where water infiltrates into artesian or other groundwater area from which the domestic water supply of any city, town, or community is or may be obtained and which is declared restricted watershed by the board.

"Scenic reserve" means designated areas possessing natural, scenic, wildland qualities which in total or individually outweigh all other values the area may possess, when evaluated in the long run for public interest.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Temporary variance" means use of land or some other area where that use differs from the permitted subzone use, where good cause is shown, and where the proposed variance is determined by the board to be in accordance with good conservation practices.

"Wilderness area" means a relatively large designated area having a diversity and abundance of native flora and fauna and geological formation, largely undisturbed by man or his influences, in which the introduction of exotic plants and animals, mining, grazing of domestic animals, removal of vegetation, overnight camping, and the construction of roads or structures is prohibited or restricted.

"Wildlife sanctuary (refuge)" means a designated area of land or water designated to preserve, protect, conserve, and manage wildlife, where hunting and other activities may be restricted through rule of the department. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §183-41)

§13-2-2 Certification. When for any purpose, a certified copy of this rule is required, the text of this rule together with pertinent portions of the conservation district subzone maps shall suffice to provide a complete copy of this rule for certification. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §§ 1-2, 171-24)

§13-2-3 Temporary variance. Notwithstanding any provision of this rule to the contrary, the board may grant for any period it deems advisable, temporary variances from zoned use, where good cause is shown and where the proposed variance is for a use determined by the board to be in accordance with good conservation practices; provided, however, that no variance shall be approved for more than one year. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §183-41)

§13-2-4 Emergency. Notwithstanding any provision of this rule the board may delegate to the chairperson, authorization to act on behalf of the board in those actions deemed to be emergency in nature to the extent that the emergency is alleviated. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS 183-41)

§13-2-5 Appeals. Any final order of the board or chairperson pursuant to this chapter may be appealed in the manner provided by §183-43, Hawaii Revised Statutes, as amended. [Eff. JUN 22 1981 ] (Auth: HRS §183-41)  
(Imp: HRS §183-43)

§13-2-6 Delegation. The board may delegate to the chairperson those powers and duties as may be lawful or proper. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §171-6)

§13-2-7 Enforcement. The board shall enforce the provisions of this chapter in accordance with the provisions of chapters 183 and 199, Hawaii Revised Statutes, as amended. The chairperson shall prescribe procedures for the internal management of enforcement functions under this rule. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §§183-41, 199-4)

§13-2-8 Penalty. Any person, firm or corporation violating any of the provisions of this rule shall be punished as provided by law. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §§183-41, 199-6, 199-7)

## SUBCHAPTER 2

## SUBZONES

§13-2-9 Establishment. (a) There are hereby established subzones within the conservation district, said subzones being delineated on maps on file with the office of the lieutenant governor and the department identified as follows:

- (1) "H-1, Makalawena," Hawaii, June 4, 1978
- (2) "H-2, Keahole Point," Hawaii, June 4, 1978
- (3) "H-3, Mahukona," Hawaii, June 4, 1978
- (4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
- (5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
- (6) "H-6, Kiholo," Hawaii, June 4, 1978
- (7) "H-7, Kailua," Hawaii, June 4, 1978
- (8) "H-8, Kealakekua," Hawaii, June 4, 1978
- (9) "H-9, Honaunau," Hawaii, June 4, 1978
- (10) "H-10, Kauluoa Point," Hawaii, June 4, 1978
- (11) "H-11, Milolii," Hawaii, June 4, 1978
- (12) "H-12, Manuka Bay," Hawaii, June 4, 1978
- (13) "H-13, Hawi," Hawaii, June 4, 1978
- (14) "H-14, Kawaihae," Hawaii, June 4, 1978
- (15) "H-15, Puu Hinai," Hawaii, June 4, 1978
- (16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
- (17) "H-17, Hualalai," Hawaii, June 4, 1978
- (18) "H-18, Puu Lehua," Hawaii, June 4, 1978
- (19) "H-19, Kaunene," Hawaii, June 4, 1978
- (20) "H-20, Puu Pohakuloa," Hawaii, June 4, 1978
- (21) "H-21, Papa," Hawaii, June 4, 1978
- (22) "H-22, Pohue Bay," Hawaii, June 4, 1978
- (23) "H-23, Puu Hou," Hawaii, June 4, 1978
- (24) "H-24, Honokane," Hawaii, June 4, 1978
- (25) "H-25, Kamuela," Hawaii, June 4, 1978
- (26) "H-26, Nohonaohae," Hawaii, June 4, 1978
- (27) "H-27, Keamuku," Hawaii, June 4, 1978
- (28) "H-28, Naohuelelua," Hawaii, June 4, 1978
- (29) "H-29, Puu O Uo," Hawaii, June 4, 1978
- (30) "H-30, Sulphur Cone," Hawaii, June 4, 1978
- (31) "H-31, Alika Cone," Hawaii, June 4, 1978
- (32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
- (33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
- (34) "H-34, Ka Lae," Hawaii, June 4, 1978
- (35) "H-35, Kukuihaele," Hawaii, June 4, 1978
- (36) "H-36, Makahalau," Hawaii, June 4, 1978
- (37) "H-37, Ahumoa," Hawaii, June 4, 1978
- (38) "H-38, Puu Koli," Hawaii, June 4, 1978
- (39) "H-39, Kokoolau," Hawaii, June 4, 1978
- (40) "H-40, Mauna Loa," Hawaii, June 4, 1978
- (41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978
- (42) "H-42, Punaluu," Hawaii, June 4, 1978
- (43) "H-43, Naalehu," Hawaii, June 4, 1978
- (44) "H-44, Honokaa," Hawaii, June 4, 1978
- (45) "H-44, Umikoa," Hawaii, June 4, 1978

- (46) "H-46, Mauna Kea," Hawaii, June 4, 1978
- (47) "H-47, Puu Oo," Hawaii, June 4, 1978
- (48) "H-48, Puu Ulaula," Hawaii, June 4, 1978
- (49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
- (50) "H-50, Wood Valley," Hawaii, June 4, 1978
- (51) "H-51, Pahala," Hawaii, June 4, 1978
- (52) "H-52, Kukaiau," Hawaii, June 4, 1978
- (53) "H-53, Keanakolu," Hawaii, June 4, 1978
- (54) "H-54, Puu Akala," Hawaii, June 4, 1978
- (55) "H-55, Upper Piihonua," Hawaii, June 4, 1978
- (56) "H-56, Kulani," Hawaii, June 4, 1978
- (57) "H-57, Kilauea Crater," Hawaii, June 4, 1978
- (58) "H-58, Kau Desert," Hawaii, June 4, 1978
- (59) "H-59, Naliikakani Point," Hawaii, June 4, 1978
- (60) "H-60, Papaaloa," Hawaii, June 4, 1978
- (61) "H-61, Akaka Falls," Hawaii, June 4, 1978
- (62) "H-62, Piihonua," Hawaii, June 4, 1978
- (63) "H-63, Puu Makaala," Hawaii, June 4, 1978
- (64) "H-64, Volcano," Hawaii, June 4, 1978
- (65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978
- (66) "H-66, Papaikou," Hawaii, June 4, 1978
- (67) "H-67, Hilo," Hawaii, June 4, 1978
- (68) "H-68, Mountain View," Hawaii, June 4, 1978
- (69) "H-69, Kalalua," Hawaii, June 4, 1978
- (70) "H-70, Kalapana," Hawaii, June 4, 1978
- (71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
- (72) "H-72, Pahoa North," Hawaii, June 4, 1978
- (73) "H-73, Pahoa South," Hawaii, June 4, 1978
- (74) "H-74, Kapoho," Hawaii, June 4, 1978
- (75) "M-1, Honolua," Maui, June 4, 1978
- (76) "M-2, Lahaina," Maui, June 4, 1978
- (77) "M-3, Olowalu," Maui, June 4, 1978
- (78) "M-4, Kahakuloa," Maui, June 4, 1978
- (79) "M-5, Wailuku," Maui, June 4, 1978
- (80) "M-6, Maalaea," Maui, June 4, 1978
- (81) "M-7, Paia," Maui, June 4, 1978
- (82) "M-8, Puu O Kali," Maui, June 4, 1978
- (83) "M-9, Makena," Maui, June 4, 1978
- (84) "M-10, Haiku," Maui, June 4, 1978
- (85) "M-11, Kilohana," Maui, June 4, 1978
- (86) "M-12, Lualailua," Maui, June 4, 1978
- (87) "M-13, Keanae," Maui, June 4, 1978
- (88) "M-14, Nahiku," Maui, June 4, 1978
- (89) "M-15, Kaupo," Maui, June 4, 1978
- (90) "M-16, Hana," Maui, June 4, 1978
- (91) "M-17, Kipahulu," Maui, June 4, 1978
- (92) "Mo-1, Ilio Point," Molokai, June 4, 1978
- (93) "Mo-2, Molokai Airport," Molokai, June 4,



- (94) "Mo-3, Kaunakakai," Molokai, June 4, 1978
  - (95) "Mo-4, Kamalo," Molokai, June 4, 1978
  - (96) "Mo-5, Halawa," Molokai, June 4, 1978
  - (97) "Lanai," June 4, 1978
  - (98) "Kahoolawe," June 4, 1978
  - (99) "O-1, Kaena," Hawaii, June 4, 1978
  - (100) "O-2, Waianae," Oahu, June 4, 1978
  - (101) "O-3, Waimea," Oahu, June 4, 1978
  - (102) "O-4, Haleiwa," Oahu, June 4, 1978
  - (103) "O-5, Schofield Barracks," Oahu, June 4, 1978
  - (104) "O-6, Ewa," Oahu, June 4, 1978
  - (105) "O-7, Kahuku," Oahu, June 4, 1978
  - (106) "O-8, Hauula," Oahu, June 4, 1978
  - (107) "O-9, Waipahu," Oahu, June 4, 1978
  - (108) "O-10, Puuloa," Oahu, June 4, 1978
  - (109) "O-11, Kahana," Oahu, June 4, 1978
  - (110) "O-12, Kaneohe," Oahu, June 4, 1978
  - (111) "O-13, Honolulu," Oahu, June 4, 1978
  - (112) "O-14, Mokapu," Oahu, June 4, 1978
  - (113) "O-15, Koko Head," Oahu, June 30, 1981
  - (114) "K-1, Makaha Point," Kauai, June 4, 1978
  - (115) "K-2, Kekaha," Kauai, June 4, 1978
  - (116) "K-3, Haena," Kauai, June 4, 1978
  - (117) "K-4, Waimea Canyon," Kauai, June 4, 1978
  - (118) "K-5, Hanapepe," Kauai, June 4, 1978
  - (119) "K-6, Hanalei," Kauai, June 4, 1978
  - (120) "K-7, Waialeale," Kauai, June 4, 1978
  - (121) "K-8, Koloa," Kauai, June 4, 1978
  - (122) "K-9, Anahola," Kauai, June 4, 1978
  - (123) "K-10, Kapaa," Kauai, June 4, 1978
  - (124) "K-11, Lihue," Kauai, June 4, 1978
- [Eff. JUN 22 1981] (Auth: HRS §183-41)  
 (Imp: HRS §183-41)

§13-2-10 Boundaries. (a) The boundaries of sub-zones within the conservation district:

- (1) Shall follow natural or fixed physical features; or
- (2) Shall be defined by a series of straight lines; or
- (3) Where coterminous with forest reserve boundaries, shall be determined by metes and bounds descriptions of the forest reserve.

(b) Any uncertainty regarding the location of the subzone boundaries shall be resolved by the board whose determination shall be final. [Eff. JUN 22 1981]  
 (Auth: HRS §183-41) (Imp: HRS §183-41)

§13-2-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable resources in such designated areas as restricted watersheds; marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcano-logical features and sites; and other designated unique areas.

(b) The boundaries of the (P) subzone shall encompass:

- (1) Lands and waters necessary for protecting watersheds, water sources, and water supplies;
  - (2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance;
  - (3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and
  - (4) All land encompassing the Northwestern Hawaiian islands except Midway island.
- (c) The following uses are permitted within the (P) subzone:
- (1) Research, recreational, and educational use which require no physical facilities;
  - (2) Establishment and operation of marine, plant, and wildlife, sanctuaries and refuges, wilderness and scenic areas, including habitat improvements;
  - (3) Restoration or operation of significant historic and archaeological sites listed on the national or state register;
  - (4) Maintenance and protection of desired vegetation, including removal of dead, deteriorated and noxious plants;
  - (5) Programs for control of animal, plant, and marine population, to include fishing and hunting;
  - (6) Monitoring, observing, and measuring natural resources;
  - (7) Occasional use; and
  - (8) Governmental use not enumerated herein where public benefit outweighs any impact on the conservation district. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: HRS §§183-41, 205-5)

§13-2-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The boundaries for the (L) subzone shall encompass:

- (1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and
- (2) Lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding or to volcanic activity and landslides which incorporate a general slope of 40% or more.

(c) The following uses are permitted in the (L) subzone:

- (1) All permitted uses stated in the (P) subzone;
- (2) Emergency warning systems or emergency telephone systems;
- (3) Flood, erosion, or siltation control projects; and
- (4) Growing and harvesting of forest products.  
[Eff. JUN 22 1981 ] (Auth: HRS §183-41)  
(Imp: HRS §§183-41, 205-5)

§13-2-13 Resource (R) subzone. (a) The objective of this subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

(b) The boundaries for the (R) subzone shall encompass:

- (1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
- (2) Lands suitable for growing and harvesting of commercial timber or other forest products;
- (3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
- (4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;
- (5) Lands and territorial waters below the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves, unless placed in a (P) or (L) subzone; and

- (6) All territorial water not expressly assigned to any subzone shall be in the (R) subzone.
  - (c) The following uses are permitted in the "R" subzone:
    - (1) All permitted uses stated in the (P) and (L) subzone;
    - (2) Aquaculture;
    - (3) Artificial reefs; and
    - (4) Commercial fishing operations.
- [Eff. ~~JUN 22 1981~~ ] (Auth: HRS §183-41)  
 (Imp: HRS §§183-41, 205-5)

§13-2-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

- (b) The boundaries for the (G) subzone shall encompass:
    - (1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and
    - (2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when said facilities are compatible with the natural physical environment.
  - (c) The following uses are permitted in the (G) subzone:
    - (1) All permitted uses as stated in the (P), (R), and (L) subzones; and
    - (2) Development of water collection, pumping, storage, control, and transmission.
- [Eff. ~~JUN 22 1981~~ ] (Auth: HRS §183-41)  
 (Imp: HRS §§183-41, 205-5)

§13-2-15 Special (SS) subzone. The objective of this subzone is to provide for areas possessing unique developmental qualities which complement the natural resources of the area:

- (1) Hawaii Loa college special subzone.
  - (A) Subzone designation for educational purposes as delineated on map entitled "O-12, Kaneohe, Oahu" June 4, 1978 on file with the department.

- (2) Haka site special subzone.
    - (A) Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe, Oahu" June 4, 1978 on file with the department.
  - (3) Kapakahi ridge special subzone.
    - (A) Subzone designation for nursing or convalescent home purposes as delineated on map entitled "O-13, Honolulu, Oahu" June 4, 1978 on file with the department.
  - (4) Sea Life park special subzone.
    - (A) Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "O-15, Koko Head, Oahu" June 4, 1981 on file with the department.
- [Eff. **JUN 22 1981** ] (Auth: HRS §183-41)  
(Imp: HRS §§183-41, 205-5)

### SUBCHAPTER 3

#### PROCEDURES FOR PERMITS AND AMENDMENTS

§13-2-19 Permits. (a) No other use, including a nonconforming use, as defined in §13-2-1 shall be made of any building, structure, premises or land within the conservation district, unless the use is approved by the board in accordance with this chapter.

(b) For every use approved by the board, a permit shall be issued.

(c) Permits shall be in the form of a written notice informing the landowner of the board's approval of the use requested. [Eff. **JUN 22 1981** ]  
(Auth: HRS §183-41) (Imp: HRS §§183-41, 205-5)

§13-2-20 Applications. (a) Applications for permits shall be submitted to the department and approval by the board shall be obtained prior to the initiation of any work within the conservation district, except as provided in §13-2-4; provided, however, the board may authorize the chairperson to review and approve applications covering permitted uses within the subzones described in subchapter 2 of this chapter. If within one hundred eighty days after receipt of the application by the department, the chairperson or the board shall fail to give notice, hold a hearing, and render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to all of the conditions of §13-2-21.

(b) All applications shall be signed by the landowner prior to submission to the department.

(c) The form and content of applications and the number of copies to be submitted shall be filed in a manner prescribed by the board.

(d) All applications shall be subject to applicable federal and state statutory requirements relating to environmental impact.

(e) Each application shall be accompanied by a filing fee of fifty (\$50.00) dollars. In addition, each application requiring a public hearing under this rule shall be accompanied by a hearing fee of an additional fifty (\$50.00) dollars. All fees shall be in the form of cash, certified or cashier's check, and payable to the State of Hawaii.

(f) Except where a final plan is submitted, every application shall be accompanied by a preliminary plan, which shall be a part of the application until superseded by a final plan approved by the board. When applicable, the preliminary or final plan shall include location map, site plan, floor plan, elevations, and landscaping plan. When applicable, and as determined by the chairperson the following shall also be required:

- (1) Maintenance plans shall be submitted for all uses involving power transmission, fuel lines, drainage systems, unmanned communication facilities, and roadways not maintained by a public agency;
- (2) Plans shall be submitted when grading, trenching, filling, dredging, or soil disposal is required;
- (3) Drainage plans for uses in areas subject to flooding, for uses in areas in or adjoining waterways, and for uses in high rainfall areas;
- (4) Plans shall be submitted for any use of animal, plant, or mineral resources; and
- (5) Areas shall be surveyed by the applicant for significant historic and archaeologic features, and protection or salvage plans shall be submitted.
- (6) Whenever an application is for use of a parcel straddling or abutting the boundary of the conservation district, maps containing a boundary interpretation by the land use commission shall be submitted with the application.

[Eff. JUN 22 1981 ]

(Auth: HRS §183-41) (Imp: HRS §§91-2, 183-41)

§13-2-21 Conditions; guidelines; compliance with laws. (a) Any use allowed within the conservation district after the effective date of this chapter is subject to the following conditions:

- (1) The use shall be compatible with the locality and surrounding areas, and appropriate to the physical conditions and capabilities of the specific parcel or parcels of lands;
- (2) The existing physical and environmental aspects of the subject areas, such as natural beauty and open space characteristics, shall be preserved or improved upon, whichever is applicable;
- (3) All buildings, structures, and facilities shall harmonize with physical and environmental conditions stated in this rule;
- (4) Use of the area shall conform with the program of the appropriate soil and water conservation district or plan approved by and on file with the department;
- (5) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board/department of water supply;
- (6) When provided or required, boat harbors, docks, and similar facilities shall have the approval of the department of transportation;
- (7) The construction, alteration, moving, demolition and repair of any building or other improvement on lands within the conservation district shall be subject to the building codes of the respective counties in which the lands are located; provided that prior to the commencement of any construction, alteration, or repair of any building or other improvement, four copies each of the final location map, plans, and specifications shall be submitted to the chairperson or an authorized representative, for approval; provided, further that any alteration or repair which does not change or expand on the existing land use shall not be subject to the above;
- (8) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes in the landscape shall have the approval of the chairperson or an authorized representative;

- (9) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
  - (10) Obstruction of public roads, trails, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;
  - (11) Except in the case of public highways, access roads shall be limited to a maximum of two lanes;
  - (12) Overloading of off-site roadways, utilities, and public facilities shall be minimized;
  - (13) Clearing areas for construction purposes shall require prior approval by the chairperson; ground cover of slopes over 40% shall not be removed unless specifically authorized by the chairperson;
  - (14) Cleared areas shall be revegetated within thirty days unless otherwise provided for in a plan on file with and approved by the department; and
  - (15) Upon approval of a particular use by the board, any work or construction to be done on the land shall be initiated within one year of the approval of the use and all work and construction shall be completed within three years of the approval of the use.
- (b) In reviewing applications, the following guidelines shall apply:
- (1) All applications shall be reviewed in such a manner that the objectives of the subzone or subzones are given primary consideration.
  - (2) All applications shall be reviewed so that any physical hazard, as determined by the department shall be alleviated by the applicant when required by the board.
  - (3) All applications for subdivision shall address their relationship with the county general plan.
  - (4) All applications shall meet the purpose and intent of the State's conservation district.
- (c) Deviation from any of the conditions provided herein may be considered by the board, only when supported by a satisfactory written justification stating:
- (1) The deviation is necessary because of the lack of practical alternatives;



- (2) The deviation shall not result in any significant adverse effects to the environment;
- (3) The deviation does not conflict with the objective of the subzone; and
- (4) The deviation is not inconsistent with the public health, safety, or welfare of the public.

(d) Any landowner or user of land within the State's conservation district shall be responsible for and comply with all applicable statutes, ordinances, and rules and regulations of the federal, state, and county governments. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41) (Imp: §§91-2, 183-41)

§13-2-22 Revocation of permits. In any case where an applicant has failed to comply with any of the conditions imposed by the board, the board may direct the chairperson to revoke the permit. [Eff. JUN 22 1981 ]  
(Auth: HRS §183-41 (Imp: HRS §183-41)

§13-2-23 Hearings. (a) Public hearings shall be held:

- (1) For conditional uses in the Protective (P) subzone, except, that any applicant who has undergone a public hearing by any federal, state, or county agency pursuant to applicable laws, rules, or regulations and for the same purposes and use as applied for under this chapter, shall be considered to have met this provision; provided however, that a certified copy of the minutes of the public hearing shall be attached to and incorporated as a part of the application; and
- (2) On all applications for a proposed use of land for commercial purposes.
- (3) For any amendment to this rule.

(b) The board shall hold a special meeting for the purpose of conducting a public hearing. The hearing shall be a full hearing before the board, conducted by the chairperson or authorized member of the board. For the purpose of its public hearing or hearings, the board shall have power to summon witnesses, administer oaths, and require the giving of testimony and shall have and enjoy all other powers authorized by law. All public hearings held pursuant to this section shall be conducted in the county in which the land is located.

(c) Notice of a hearing shall be given by publication at least once in a newspaper of general circulation in the State and in the county in which the land is located, and by mail to all landowners whose property will be affected by any proposed change or changes or the establishment of a new subzone. [Eff. JUN 22 1981 ]  
(Auth: §183-41) (Imp: §91-2 and 183-41)

§13-2-25 Amendments. (a) Whenever any landowner or government agency whose property will be directly affected by this chapter or amendment thereto makes an application to change the boundaries or permitted uses of any subzone, or establish a new subzone with certain permitted uses, or where the board proposes to make a change or changes itself, such change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

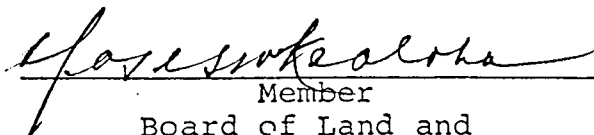
(b) Procedures for amending this chapter are prescribed in §183-41(d), Hawaii Revised Statutes, as amended. [Eff. JUN 22 1981 ] (Auth: HRS §183-41)  
(Imp: HRS §183-41)

The rules repealing Regulation Oahu No. 1, entitled, "Conservation District Zoning Regulation;" Regulation Hawaii No. 3, entitled "Conservation District Sub-Zoning Regulation, Hawaii;" and Regulation No. 4, entitled "A Regulation of the Department of Land and Natural Resources, State of Hawaii, Providing for Subzones, Uses, Appeals, Enforcement and Penalty, pursuant to Chapter 183-41, Hawaii Revised Statutes, as Amended;" and adopting Chapter 2 of Title 13, Administrative Rules, entitled "Conservation Districts" on the Summary Page dated May 29, 1981 were adopted on May 29, 1981 by the Board of Land and Natural Resources following public hearings on April 28 and 29 and May 4 and 5, 1981 after public notice was given in the Honolulu Star-Bulletin on April 7, 1981 and the Garden Island News, Hawaii Tribune Herald and the Maui News on April 8, 1981.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.



Chairperson and Member  
Board of Land and  
Natural Resources



Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General



Governor

JUN 12 1981

Date Filed

REC'D. BY

JUN 12 PM 2 00

GOVERNOR'S OFFICE

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

Summary

1. Section 13-2-15 (SS) subzone is amended.

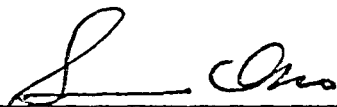
§13-2-15 Special (SS) subzone. The objective of this subzone is to provide for areas possessing unique developmental qualities which complement the natural resources of the area:

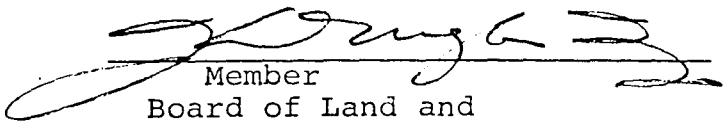
- (1) Hawaii Loa college special subzone.  
Subzone designation for educational purposes as delineated on map entitled "O-12, Kaneohe, Oahu" June 4, 1978 on file with the department;
- (2) Haka site special subzone.  
Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe, Oahu" June 4, 1978 on file with the department;
- (3) Kapakahi ridge special subzone.  
Subzone designation for nursing or convalescent home purposes as delineated on map entitled "O-13, Honolulu, Oahu" June 4, 1978 on file with the department;
- (4) Sea Life park special subzone.  
Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "O-15, Koko Head, Oahu" June 4, 1981 on file with the department;
- (5) Milolii-Hoopuloa special subzone.  
Subzone designation for Milolii-Hoopuloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 62, SLH 1982, as delineated on map entitled H-11, Milolii, South Kona, Hawaii, on file with the department. Building and other standards shall be established by the chairperson. [Eff. 6/22/81; am JUL 26 1984 ]  
(Auth: HRS §183-41; Act 62 SLH 1982; Act 83 SLH 1984) (Imp: HRS §§183-41, 205-5)

DEPARTMENT OF LAND AND NATURAL RESOURCES

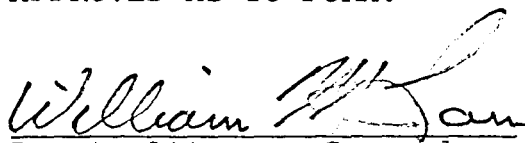
The amendments to section 13-2-15 were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources following public hearings on January 26, 1984, after public notice was given in the Honolulu Star-Bulletin, West Hawaii Today on December 30, 1983.


These amendments to section 13-2-15 shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
Chairperson and Member  
Board of Land and  
Natural Resources

  
\_\_\_\_\_  
Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

  
\_\_\_\_\_  
Governor

\_\_\_\_\_  
Date Filed

REC'D. BY

1984 JAN. 16 AM 9 21

LI. GOVERNOR'S OFFICE

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapters 13-1 and 13-2  
Hawaii Administrative Rules  
August 23, 1985

SUMMARY

1. Section 13-1-31(d) is amended
2. Section 13-2-9 is amended

Section 13-2-9, Establishment. " There are hereby established subzones within the conservation district, the subzones being delineated on maps on file with the office of the lieutenant governor and the department identified as follows:

- (1) "H-1, Makalawena," Hawaii, June 4, 1978
- (2) "H-2, Keahole Point," Hawaii, August 23, 1985
- (3) "H-3, Mahukona," Hawaii, June 4, 1978
- (4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
- (5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
- (6) "H-6, Kiholo," Hawaii, August 23, 1985
- (7) "H-7, Kailua," Hawaii, August 23, 1985
- (8) "H-8, Kealakekua," Hawaii, June 4, 1978
- (9) "H-9, Honaunau," Hawaii, June 4, 1978
- (10) "H-10, Kaulua Point," Hawaii, June 4, 1978
- (11) "H-11, Milolii," Hawaii, August 23, 1985
- (12) "H-12, Manuka Bay," Hawaii, June 4, 1978
- (13) "H-13, Hawi," Hawaii, June 4, 1978
- (14) "H-14, Kawaihae," Hawaii, June 4, 1978
- (15) "H-15, Puu Hinai," Hawaii, June 4, 1978
- (16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
- (17) "H-17, Hualalai," Hawaii, June 4, 1978
- (18) "H-18, Puu Lehua," Hawaii, June 4, 1978
- (19) "H-19, Kaunene," Hawaii, June 4, 1978
- (20) "H-20, Puu Pohakuloa," Hawaii, August 23, 1985
- (21) "H-21, Papa," Hawaii, June 4, 1978
- (22) "H-22, Pohue Bay," Hawaii, August 23, 1985
- (23) "H-23, Puu Hou," Hawaii, June 4, 1978
- (24) "H-24, Honokane," Hawaii, June 4, 1978
- (25) "H-25, Kamuela," Hawaii, June 4, 1978
- (26) "H-26, Nohoaoahae," Hawaii, June 4, 1978
- (27) "H-27, Keamuku," Hawaii, June 4, 1978
- (28) "H-28, Nahelelelua," Hawaii, August 23, 1985
- (29) "H-29, Puu O Uo," Hawaii, August 23, 1985
- (30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
- (31) "H-31, Alike Cone," Hawaii, June 4, 1978
- (32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
- (33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
- (34) "H-34, Ka Lae," Hawaii, June 4, 1978
- (35) "H-35, Kukuihaele," Hawaii, June 4, 1978
- (36) "H-36, Makahalau," Hawaii, June 4, 1978
- (37) "H-37, Ahumoa," Hawaii, June 4, 1978
- (38) "H-38, Puu Koli," Hawaii, June 4, 1978
- (39) "H-39, Kokoolau," Hawaii, June 4, 1978
- (40) "H-40, Mauna Loa," Hawaii, June 4, 1978



- (84) "M-10, Haiku," Maui, August 23, 1985
  - (85) "M-11, Kilohana," Maui, August 23, 1985
  - (86) "M-12, Lualailua," Maui, June 4, 1978
  - (87) "M-13, Keanae," Maui, June 4, 1978
  - (88) "M-14, Nahiku," Maui, June 4, 1978
  - (89) "M-15, Kaupo," Maui, June 4, 1978
  - (90) "M-16, Hana," Maui, August 23, 1985
  - (91) "M-17, Kipahulu," Maui, June 4, 1978
  - (92) "Mo-1, Ilio Point," Molokai, June 4, 1978
  - (93) "Mo-2, Molokai Airport," August 23, 1985
  - (94) "Mo-3, Kaunakakai," Molokai, August 23, 1985
  - (95) "Mo-4, Kamalo," Molokai, June 4, 1978
  - (96) "Mo-5, Halawa," Molokai, June 4, 1978
  - (97) "Lanai," June 4, 1978
  - (98) "Kahoolawe," June 4, 1978
  - (99) "O-1, Kaena," Hawaii, June 4, 1978
  - (100) "O-2, Waianae," Oahu, June 4, 1978
  - (101) "O-3, Waimea," Oahu, June 4, 1978
  - (102) "O-4, Haleiwa," Oahu, August 23, 1985
  - (103) "O-5, Schofield Barracks," Oahu, June 4, 1978
  - (104) "O-6, Ewa," Oahu, June 4, 1978
  - (105) "O-7, Kahuku," Oahu, June 4, 1978
  - (106) "O-8, Hauula," Oahu, June 4, 1978
  - (107) "O-9, Waipahu," Oahu, June 4, 1978
  - (108) "O-10, Puuloa," Oahu, August 23, 1985
  - (109) "O-11, Kahana," Oahu, June 4, 1978
  - (110) "O-12, Kaneohe," Oahu, August 23, 1985
  - (111) "O-13, Honolulu," Oahu, August 23, 1985
  - (112) "O-14, Mokapu," Oahu, August 23, 1985
  - (113) "O-15, Koko Head," Oahu, August 23, 1985
  - (114) "K-1, Makaha Point," Kauai, June 4, 1978
  - (115) "K-2, Kekaha," Kauai, June 4, 1978
  - (116) "K-3, Haena," Kauai, August 23, 1985
  - (117) "K-4, Waimea Canyon," Kauai, June 4, 1978
  - (118) "K-5, Hanapepe," Kauai, June 4, 1978
  - (119) "K-6, Hanalei," Kauai, June 4, 1978
  - (120) "K-7, Waialeale," Kauai, June 4, 1978
  - (121) "K-8, Koloa," Kauai, August 23, 1985
  - (122) "K-9, Anahola," Kauai, June 4, 1978
  - (123) "K-10, Kapaa," Kauai, August 23, 1985
  - (124) "K-11, Lihue," Kauai, August 23, 1985
- [Eff: 6/21/81; am NOV 1 1985] (Auth: HRS Sec. 183-41)  
 (Imp: HRS Sec. 183-41)

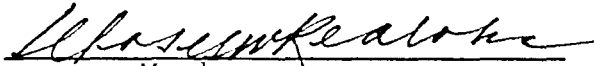
DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to sections 13-1-31(d), and 13-2-9 were adopted on August 23, 1985 by the Board of Land and Natural Resources following public hearings held on July 16, 1985 after public notice was given in the Honolulu Star-Bulletin, Honolulu Advertiser, Garden Isle, Maui News, Hawaii Tribune Herald, on June 25, 1985.

These amendments to sections 13-1-31(d), and 13-2-9 shall take effect ten days after filing with the Office of the Lieutenant Governor.




Chairperson and Member  
Board of Land and  
Natural Resources



Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
Deputy Attorney General  
George R. Ariyoshi  
Governor  
State of Hawaii

Date: 10-18-85

Filed

REC'D BY

EX 2 1

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 1 RULES OF PRACTICE AND PROCEDURE

Adopting Rules for Contested Case Hearings

Summary

1. Section 131-1-2 of Title 13, Chapter 1, entitled "Definitions" is amended.
2. Subchapter 4 of Title 13, Chapter 1, is amended to read "Declaratory Rulings."
3. Subchapter 5 of Title 13, Chapter 1, providing for "Contested Case Proceedings" is adopted.

"Sec. 13-1-2 Definitions. (a) As used in this title, unless the context requires otherwise:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

"Department" means the department of land and natural resources.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Person" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Petitioner" means the person or agency on whose behalf the petition or application is made.

"Presiding officer" means the person conducting the hearing which shall be the chairperson or the chairperson's designated representative.

"Proceeding" means the board's consideration of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the board's jurisdiction, initiated by a filing or submittal or request or a board's notice or order, and shall include but not be limited to:

- (1) Proceeding involving the adoption of forest reserve or watershed boundaries;
- (2) Petitions for the creation of land use sub-zones in conservation districts;
- (3) Proceedings involving the adoption of forest, forest reserve, watershed, fish and game, water, parks, historical sites, recording and land development, use, management, disposal and acquisition rules;

- (4) Petitions or applications for the granting or declaring any right, privilege, authority, or relief under or from any provision of law or of any rule or requirement made pursuant to a power granted by law;
- (5) An investigation or review instituted or requested to be instituted by the board;
- (6) Other proceedings involving the adoption, amendment, or repeal of any rule of the board, whether initiated by board order or notice or by petition of an interested person.

"Public hearing" means a hearing required by law in which members of the public generally may comment upon a proposed rule or application.

"Rules" means the rules of practice and procedure before the board.

"Public records" is defined in section 92-50, Hawaii Revised Statutes. The term shall include all rules, written statements of policy or interpretation formulated, adopted or used by the board, all final opinions and orders, the minutes of meetings of the board and any other material required by law to be kept on file in the office of the board unless accorded confidential treatment pursuant to statute or the rules of the board." [Eff. 6/22/81; SEP 07 1982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-8, 171-6)]

"Subchapter 4 Declaratory Rulings."

§13-1-29 Request for hearing. (a) A hearing on a contested matter may be requested by the board on its own motion or upon the written petition of any government agency or any interested person who then properly qualifies to be admitted as a party. An oral or written request for a contested case hearing must be made by the close of the public hearing (if one is required) or the board meeting at which the matter is scheduled for disposition (if no public hearing is required). In either situation, the person or agency requesting the contested case hearing must file (or mail and postmark) a written petition with the board not later than ten days after the close of the public hearing or the board meeting, whichever is applicable. The time for making an oral or written request and submitting a written petition may be waived by the board.

(b) A petition requesting a contested case hearing shall contain concise statements of:

- (1) The legal authority under which the proceeding, hearing or action is to be held or made;
- (2) The petitioner's interest that may be affected;
- (3) The disagreement, denial, or grievance which is being contested by the petitioner;
- (4) The basic facts and issues raised; and
- (5) The relief to which the party or petitioner seeks or deems itself entitled.

[Eff. SEP 07 1982] (Auth: HRS §91-2)

(Imp: HRS §91-9)

"SUBCHAPTER 5  
CONTESTED CASE PROCEEDINGS

§13-1-28 Contested case hearings. When required by law, the board shall hold a contested case hearing upon its own motion or on the written petition of any government agency or any interested person who is properly admitted as a party pursuant to section 13-1-31. Unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, the board may adopt procedures that in its opinion will best serve the purposes of the hearings. Where a public hearing is required by law, it shall be held prior to the contested case hearing. [Eff. SEP 07 ]982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-9)



§13-1-30 Notice of hearing. After a determination is made that a contested case hearing is required, the written notice of hearing shall be served on parties in accordance with section 91-9.5, Hawaii Revised Statutes, and shall be served on all persons or agencies admitted as a party at their last recorded addresses at least fifteen days before the hearing date. Further, the notice shall be published as provided by law but not less than once in a newspaper of general circulation within the State and within the county provided that matters of internal management shall not be subject to the publication requirement. [Eff. SEP 07 1982] (Auth: HRS §91-2, 171-6). (Imp: HRS §§91-9, 91-9.5)

§13-1-31 Parties. (a) The following persons or agencies shall be admitted as a party:

- (1) The petitioner shall be a party.
- (2) All government agencies whose jurisdiction includes the land in question may be admitted as parties upon timely application.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.
- (4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the board may approve the application only if the applicant's participation will substantially assist the board in its decision making.

(b) The presiding officer or the board as provided by law may deny any application to be a party when it appears that:

- (1) The position of the applicant for participation is substantially the same as the position of a party already admitted to the proceedings; and
- (2) The admission of additional parties will not add substantially new information or the addition will render the proceedings inefficient and unmanageable.

(c) All persons with similar interests seeking to be admitted as parties shall be considered at the same time so far as possible.

(d) Where a contested case hearing has been scheduled, any other interested person who qualifies to be a party under subsection (a) may apply to participate, in accordance with this subchapter by filing a written application with the board not later than ten days before the scheduled contested case hearing. Except for good cause shown, late filings shall not be permitted.

(e) The application to become a party shall contain the following:

- (1) The nature of applicant's statutory or other right.
- (2) The tax map key number of the applicant's property as well as the petitioner's property. The nature and extent of applicant's interest.

- (3) The effect of any decision in the proceeding on applicant's interest.
- (4) The difference in the effect of the proposed action on the applicant's interest and the effects of the proposed action on the general public.
- (f) If relevant, the application shall also address:
  - (1) Other means available whereby applicant's interest may be protected.
  - (2) The extent the applicant's interest may be represented by existing parties.
  - (3) The extent the applicant's interest in the proceedings differs from that of the other parties.
  - (4) The extent the applicant's participation can assist in development of a complete record.
  - (5) The extent the applicant's participation will broaden the issue or delay the proceeding.
  - (6) How the applicant's intervention would serve the public interest.
  - (7) Any other information the board may add or delete.
- (g) If any party opposes another person's application to be a party, the party may file objections for the record no later than ten days prior to the hearing.
- (h) All applications to be a party shall be acted upon as soon as practicable and shall be decided not later than the commencement of the contested case hearing.
- (i) A person whose petition to be admitted as a party has been denied may appeal that denial to the circuit court pursuant to section 91-14, Hawaii Revised Statutes. [Eff. SEP 07 1984] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-9.5)

§13-1-32 Conduct of hearing. (a) Contested case hearings shall be conducted in accordance with this subchapter, and chapter 91, HRS.

(b) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing authorized by law that are necessary for the orderly and just conduct of a hearing. The board members may examine and cross-examine witnesses.

(c) The chairperson of the board shall be the presiding officer. However, the chairperson may designate another board member, an appointed representative or a master to be presiding officer unless prohibited by law.

(d) The board may conduct the hearing or, unless otherwise prohibited by law, the board in its discretion may designate a hearing officer or master to conduct contested case hearings.

(e) The presiding officer shall provide that a verbatim record of the evidence presented at any hearing is taken unless waived by all the parties. Any party may obtain a certified transcript of the proceedings upon payment of the fee established by law for a copy of the transcript.

(f) In hearings on applications, petitions, complaints, and violations, the petitioner or complainant shall make the first opening statement and the last closing argument unless the board directs otherwise. Other parties shall be heard in such order as the presiding officer directs. After all parties close their case, the department may make its recommendations, if any.

(g) Where a party is represented by more than one counsel, they may allocate witnesses between them but only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

(h) Each party shall have the right to conduct such cross-examinations of the witnesses as may be required for a full and true disclosure of the relevant facts and shall have the right to submit rebuttal evidence, subject to limitation by the presiding officer.

(i) To avoid unnecessary or repetitive evidence, the presiding officer may limit the number of witnesses, the extent of direct or cross examination or the time for testimony upon a particular issue, subject to law. [Eff. (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 92-16)] ]

(j) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. [Eff. SEP 07 1982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-9(d))]

§13-1-33 Procedure for witnesses. (a) Witnesses may be subpoenaed as set forth below:

- (1) Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the board shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or a board member may request the issuance of a subpoena.
- (2) Request for the issuance of subpoenas for the production of documents or records shall be in writing, shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved. Only parties or a board member may request the issuance of a subpoena duces tecum.

(b) Subpoenas may be issued by the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with this section giving the name and address of the desired witness and tendering the proper witness and mileage fees. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall state at whose request the subpoena is issued. Requests for subpoenas shall be filed not later than three days before the scheduled hearing.

(c) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose request the witness appears.

[Eff. SEP 07 1982] (Auth: HRS §§91-2, 171-6)

(Imp: HRS §92-16)

§13-1-34 Motions. (a) All motions other than those made during a hearing shall be made in writing to the board, shall state the relief sought, and shall be accompanied by an affidavit or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memorandum, if any.

(b) The moving party shall serve a copy of all motions on all other parties at least forty-eight hours prior to the hearing on the motion and shall file with the board the original with proof of service.

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than twenty-four hours prior to the hearing. The original and proof of service shall be filed with the board.

(d) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion. [Eff. SEP 07 1982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-7)]

§13-1-35 Evidence. (a) The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(b) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the board in determining the matter on its merits.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained, or the submission of the evidence itself.

(e) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the presiding officer five days before the hearing or if such prior service is waived, to permit proper cross examination of the witnesses on matters contained in the prepared testimony.

(f) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(g) Exhibits shall be prepared as follows:

(1) Documents, pleadings, correspondence and other exhibits shall be legible and must be prepared on paper either 8-1/2 x 13 inches or 8-1/2 x 11 inches in size. Charts and other oversize exhibits must be bound or



folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.

- (2) When exhibits are offered in evidence, the original and eight copies, unless otherwise waived by the board, shall be furnished to the presiding officer for the board's use with adequate copies for review by other parties, unless the copies have been previously furnished or the presiding officer directs otherwise.

(h) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

(i) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(j) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time. [Eff. SEP 07 1982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-10)]

§13-1-36 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held pre-hearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff. SEP 07 1982  
(Auth: HRS §§91-2, 171-6) (Imp: HRS §91-9)

§13-1-37 Correction of transcript. Motions to correct the transcript shall be made within five days after receipt of the transcript and shall be acted upon by the presiding officer. [Eff. SEP 07 1982] (Auth: HRS §§91-2, 171-6)  
(Imp: HRS §91-10)

§13-1-38 Disqualification. No board member shall sit in any proceeding in which the member has any pecuniary or business interest involved in the proceeding or who is related within the first degree by blood or marriage to any party to the proceeding. If, after declaring any pecuniary interest or consanguinity to the parties, the parties do not oppose the member from sitting in a proceeding, the record shall note clearly the waiver by the parties. [Eff. SEP 07 1982 (Auth: HRS §§91-2, 171-6) (Imp: HRS §§84-14, 91-13, 171-4)]

§13-1-39 Ex parte (single party) communications.

(a) No party or person petitioning to be a party to a proceeding before the board nor their employees, representatives or agents shall make an unauthorized ex parte communication either oral or written concerning the contested case to any member of the board who will be a participant in the decision-making process.

(b) The following classes of ex parte communications are permitted:

- (1) Those which relate solely to matters which a board member is authorized by the board to dispose of on ex parte basis.
- (2) Requests for information with respect to the status of a proceeding.
- (3) Those which all parties to the proceeding agree or which the board has formally ruled may be made on an ex parte basis.
- (4) Those with representatives of any news media on matters intended to inform the general public. [Eff. SEP 07 1982] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-13)

§13-1-40 Decisions and orders. (a) A proceeding shall be deemed submitted for decision by the board after the taking of evidence, the filing of briefs, the consideration of motions, and the presentation of oral argument as may have been permitted or prescribed by the presiding officer. Where a hearing officer has conducted the hearing, the hearing officer shall file a report with the evidence, or a summary thereof, as well as proposed findings of facts and conclusions of law which the board may adopt, reject or modify. A party to the proceedings may submit a proposed decision and order which shall include proposed findings of fact and conclusions of law. The proposals shall be filed with the board and mailed to each party to the proceeding not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.

(b) Within the time established by law, if any, or within a reasonable time after the hearing, the board shall render its findings of fact, conclusions of law and decision and order approving the proposal, denying the proposal, or modifying the proposal by imposing conditions. The vote of each member shall be recorded. Upon agreement by the parties, the examination and proposed decision provisions under section 91-11, HRS, may be waived pursuant to section 91-9(d), HRS.

(c) Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed findings so presented.

(d) Decisions and orders shall be served by mailing copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy. When a party to an application proceeding has appeared by a representative, service upon the representative or counsel shall be deemed to be service upon the party.

[Eff. SEP 07 1982] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-12)

§13-1-41 Reconsideration. (a) The board may reconsider a decision it has made on the merits only if the moving party can show:

(1) New information not previously available would affect the result; or

(2) That a substantial injustice would occur.

(b) In either case, a motion for reconsideration shall be made not later than five business days after the decision or any deadline established by law for the disposition of the subject matter, whichever is earlier. [Eff. SEP 07 1982]  
(Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-11, 91-12)


§13-1-42 Appeals. Parties to proceedings who are aggrieved by the decision of the board may obtain judicial review thereof in the manner set forth in section 91-14, Hawaii Revised Statutes, provided that the court may also reverse or modify a finding of the board if such finding appears to be contrary to the clear preponderance of the evidence. [Eff. SEP 07 1982 (Auth: HRS §§91-2, 91-14) (Imp: HRS §§91-14, 91-15)."]

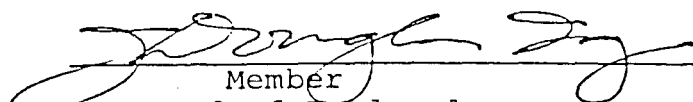


DEPARTMENT OF LAND AND NATURAL RESOURCES

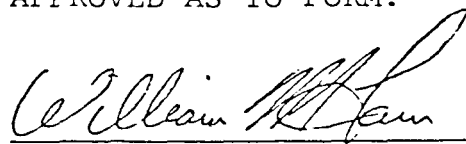
The rules amending section 13-1-2 entitled "Definitions" and adopting subchapter 4 entitled "Contested Case Hearings", both of Title 13, Chapter 1, Rules of Practice and Procedure before the Board of Land and Natural Resources on the Summary Page dated August 27, 1982, were adopted on August 27, 1982, by the Board of Land and Natural Resources following public hearings on August 5, 1982, after public notice was given in the Honolulu Star-Bulletin, Honolulu Advertiser, Garden Island News, Hawaii Tribune Herald and the Maui News on July 16, 1982.

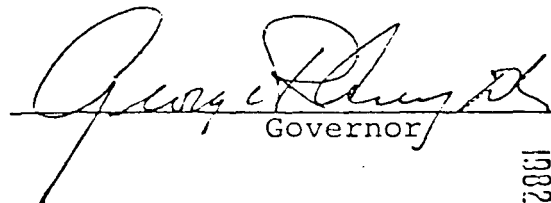
These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
Chairperson and Member  
Board of Land and  
Natural Resources

  
Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
Deputy Attorney General

  
Governor

LI. GOVERNOR'S OFFICE  
1982 AUG 27 PM 1 41  
REC'D. BY  
Date Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapters 13-1 and 13-2  
Hawaii Administrative Rules  
August 23, 1985

SUMMARY

1. Section 13-1-31(d) is amended
2. Section 13-2-9 is amended

Section 13-1-31 Parties. \*\*\*

(d) Where a contested case hearing has been scheduled, any other interested person who qualifies to be a party under subsection (a) may apply to participate, in accordance with this subchapter, by filing a written application with the board not later than ten days before the scheduled contested case hearing or at an earlier date as established by the board. Except for good cause shown, late filings shall not be permitted.

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[Eff. 9/7/82; am NOV 1 1985 ] (Auth: HRS Sec. 91-2, 171-6) (Imp: HRS Sec. 91-9, 91-9.5)

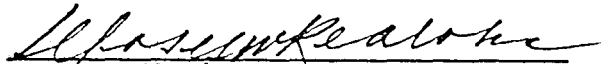
DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendments to sections 13-1-31(d), and 13-2-9 were adopted on August 23, 1985 by the Board of Land and Natural Resources following public hearings held on July 16, 1985 after public notice was given in the Honolulu Star-Bulletin, Honolulu Advertiser, Garden Isle, Maui News, Hawaii Tribune Herald, on June 25, 1985.

These amendments to sections 13-1-31(d), and 13-2-9 shall take effect ten days after filing with the Office of the Lieutenant Governor.



Chairperson and Member  
Board of Land and  
Natural Resources



Member  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
Deputy Attorney General

George R. Ariyoshi  
Governor  
State of Hawaii

Date: 10-18-85

Filed

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